

SPRING 2006

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Perspectives

THE MAGAZINE FOR THE UNIVERSITY OF MINNESOTA LAW SCHOOL



LAW

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Jennifer Derryberry Mann
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Lotem Almog
Dana Bartocci
Dale Carpenter
Jim Chen
Brad Clary
Anita Cole
Amber Fox
Alex Gese
Ann Hagen
Allison Haley
Michael Hannon
Jennifer Hanson
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Dave Nardolillo
Anna Pia Nicolas
sue rich
Scott Russell
Michael Stokes Paulsen
Mary Thacker
Karla Vehrs
Carl Warren
Leslie Watson

PHOTOGRAPHERS

William Cameron
Jessica Johnson
Dan Marshall
Tim Rummelhoff
Stephen Simon

DESIGNER

Jennifer Kaplan, Red Lime, LLC

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Dean's Perspective

During the past four years, the Law School's stature has grown, primarily due to strong faculty hiring and even greater selectivity in student recruitment. As you know, one of the most telling measures of a law school's stature is the quality of its faculty. I believe that it is the achievements of our faculty that help influence top students to entrust their educational futures to the University of Minnesota Law School. In the last four years, we have made the most significant number of promising lateral hires that the Law School has seen in decades, bringing several nationally known and rising stars to the faculty. We have made strategic hires in the areas of criminal law, environmental law, intellectual property, and international law, positioning the faculty among the very best in the country in those areas. We are ending a very successful year—indeed, an extraordinary year—for appointments, in which seven offers were accepted. We are also especially proud to have Dean Emeritus Bob Stein, '61, returning to the faculty after more than a decade of distinguished service as executive director of the American Bar Association. Our faculty is now relatively one of the largest in the nation, with a 13/1 student/faculty ratio.



DEAN ALEX M. JOHNSON, JR.

In addition, the Law School has become increasingly selective in its admissions process. The median GPA of last year's entering class was 3.54, and the median LSAT score was 164 (approximately 91st percentile); making this the statistically strongest entering class ever. Indeed, bucking the national trend, the Law School last year saw its largest number of applications in the school's history, and this year's application pool has broken the record yet again. I am also proud to note that our student body is becoming ethnically and geographically more diverse.

Further, as we reach the close of our fiscal year I am pleased to report that the gifts to the Law School this year will set a new record for a year in which we are not in a capital campaign. As a result, I am also happy to share the news that the Law School maintains its outstanding position in the top 20 in national rankings. Our accomplishments have been extraordinary, and everyone in our Law School community can take pride in knowing they played a part in these significant achievements.

I hope you will enjoy this issue of *Perspectives*. Among the Law School's many growing strengths is its constitutional law faculty, and we are pleased to highlight their work in this issue; you will notice that our constitutional law scholars are not uniform in their opinions regarding some of the most pressing constitutional issues.

We also have a great deal of good news to share about the many successes of our faculty, students, and alumni, from the serious (the Law Review Symposium on the future of the Supreme Court) to the not-so-serious (another rollicking, sold-out TORT show).

As you are aware, this is my last message to you as dean, as I have transitioned to emeritus status. I have thoroughly enjoyed serving as dean of this great Law School and I leave knowing that it is in excellent shape and that its future is boundless!

Dean and William S. Pattee Professor of Law

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FACULTY PERSPECTIVE In keeping with the University of Minnesota’s overarching goal to strengthen its already impressive reputation as one of the nation’s premier public research institutions, the Law School faculty brings its considerable talent, insight, and work ethic to legal education and scholarship. In this section, catch up on faculty research and development projects, newly published works, and works in progress. Discover how the Law Library is creating a state-of-the-art digital archive of the papers of esteemed American attorney Clarence Darrow. Get to know Associate Professor Brett McDonnell, whose latest work supports greater employee involvement in corporate decision making, and get up to speed on the many lectures and events made possible throughout the year by the Law School’s highly productive and influential faculty.

Faculty R&D

The following is a partial list of the many accomplishments and activities of the Law School's faculty.

Oct. 1, 2005 through March 1, 2006



Beverly Balos
Stephen F. Befort
Brian Bix

BEVERLY BALOS

Professor Balos participated in training legal advocates for victims of domestic violence at the Annual Meeting of the Minnesota Coalition for Battered Women in November 2005. She was part of the audit team working with professionals from the State of Nevada in creating domestic violence prosecution best practices guidelines. At the end of March 2006, she presented a paper at the 23rd Annual Edward V. Sparer Symposium sponsored by the Greater Philadelphia Law School Consortium and the Philadelphia Bar Association. The symposium topic was Civil Gideon: Making the Case; her article, "Lawyers Matter: Vindicating the Right to be Free from Domestic Violence," will be published in the *Temple Political and Civil Rights Law Review*.

STEPHEN F. BEFORT

Professor Befort has been active on a number of projects relating to labor and employment law. During the current school year, he has published the following articles and book chapters: "A Reprise of a Classic: Gorman & Finkin's Basic Text on Labor Law: Unionization and Collective Bargaining," in the *University of Pennsylvania Journal of Labor and Employment Law*, and "The Story of *Sutton v. United Air Lines, Inc.*: Narrowing the Reach of the Americans with Disabilities Act," published by Foundation Press in *Employment Discrimination Stories*. He also authored a 2005 Supplement to his book *Employment Law and Practice* published by West Group. In addition, Professor Befort has published the following professional education articles: "The Labor and Employment Law Decisions of the Supreme Court's 2003-04 Term," in the *American Bar Association's GP Solo* maga-

zine, and "Public Sector Update 2004-05" in *Public Sector Labor & Employment Law* (Minnesota CLE). He also completed work on a law review article that will appear shortly in the *Ohio State Law Journal*, "When Quitting is Fitting: The Need for a Reformulated Sexual Harassment/Constructive Discharge Standard in the Wake of *Pennsylvania State Police v. Suders*" (with Sarah A. Gorajski). A frequent labor arbitrator, Professor Befort currently serves as coeditor of the 2005 *Annual Proceedings of the National Academy of Arbitrators*, which will be published in book form by the Bureau of National Affairs.

BRIAN BIX

Professor Bix's forthcoming publications include two books: the fourth edition of *Jurisprudence: Theory and Context* (Sweet & Maxwell & Carolina Academic Press); and the second edition of *Jurisprudence: Cases and Materials* (LexisNexis), the latter written with Stephen Gottlieb, Timothy Lytton, and Robin West. Other recent or forthcoming publications include "Philosophy, Morality, and Parental Priority," *Family Law Quarterly*; "Raz, Authority, and Conceptual Analysis," *American Journal of Jurisprudence*; "Reductionism and Explanation in Legal Theory," *Properties of Law* (Oxford University Press); "The ALI Principles and Agreements: Seeking a Balance Between Status and Contract," *Reconciling the Family* (Cambridge University Press); "Everything I Know About Marriage I Learned from Law Professors," *San Diego Law Review*; and "Legal Positivism and 'Explaining' Normativity and Autonomy," *American Philosophical Association Newsletter*. He was an invited speaker on jurisprudential topics at conferences held at Cornell University, Notre Dame University, and the University of Bristol, UK.

DAN L. BURK

In October 2005 Professor Burk attended the Sixth Annual Conference of the Association of Internet Researchers (AoIR) where he delivered two papers, "Legal Standards in Digital Rights Management Technology," and "An Information Ownership Approach to Spyware." Professor Burk also attended the October conference of the Society for Social Studies of Science (4S) in Pasadena, Calif., where he spoke on "Beyond Copyleft: Patenting Open Source Bioinformatics." In November Professor Burk was honored as the Katz-Kiley Fellow at the University of Houston Law Center, where he delivered the 12th Annual Katz-Kiley Lecture on "The Problem of Process in Biotechnology." Later in the month he traveled to Genoa, Italy, where he delivered a series of three endowed Fresco Foundation lectures on the economics of patent law at the University of Genoa Faculty of Law. In December, he traveled to Harvard Law School, where he participated in the Berkman Center workshop on Patent Law and Innovation in the Life Sciences. In February 2006 Professor Burk met with other experts convened by the U.C. Berkeley Center for Technology and Law at a workshop on the intellectual property implications of the Google "Book Print" database project. In March he visited New Haven, Conn., where he spoke to the Yale Law School Information Society Project on "The Goldilocks Hypothesis: Balancing Intellectual Property Rights at the Boundary of the Firm," a paper coauthored by Law School Professor Brett McDonnell. Professor Burk also presented this paper to a faculty workshop at the University of Utah, where he additionally delivered the S.J. Quinney Lecture on "Method and Madness in Copyright Law." Besides his collaboration with Professor McDonnell, Professor Burk has worked together with Professors Gove Allen of the Freeman School of Business at Tulane University and Charles Ess of Drury University to write "Legal and Ethical Research Issues in Automated Internet Data Collection," which is forthcoming in *Ethics and Information Technology*. In addition, his Katz-Kiley lecture on "The Problem of Process in Biotechnology" is forthcoming in the *University of Houston Law Review*.

DALE CARPENTER

Professor Carpenter is researching and writing a book on the background facts and litigation in *Lawrence v. Texas*, the 2003 Supreme Court decision that struck down the remaining state sodomy laws under the 14th Amendment's Due Process Clause. The book is tentatively titled *Sex, Lies, and*



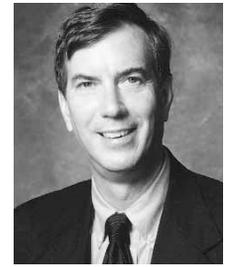
THE CENTENNIAL PROFESSOR OF LAW REAPPOINTMENT LECTURE

On Nov. 8, 2005, Barry C. Feld commemorated his reappointment as the Centennial Professor of Law, delivering his lecture, "Police Interrogation of Juveniles: An Empirical Study of Policy and Practice," in the Law School's Lockhart Hall. Professor Feld, one of the nation's leading scholars of juvenile justice, teaches criminal procedure, juvenile law, torts, and education and law. He was named the first Centennial Professor of Law in 1990 and has held that position since; in 1981–82 he was the Julius E. Davis Professor of Law. He received his B.A. from the University of Pennsylvania and graduated, *magna cum laude*, from the Law School, where he was note and comment editor of the *Minnesota Law Review* and a member of the Order of the Coif. He received his Ph.D. in sociology from Harvard University, where he was a Russell Sage Foundation Fellow in Law and the Social Sciences. In 1972 he joined the Law School faculty. In 1974 and 1978, he served as assistant Hennepin County attorney in the Criminal and Juvenile Divisions. In 1987, Professor Feld was a visiting scholar at the National Center for Juvenile Justice sponsored by the U. S. Department of Justice Office of Juvenile Justice and Delinquency Prevention. He was a reporter for the American Bar Association-Institute of Judicial Administration Juvenile Justice Standards Project, and was a member of the Minnesota Department of Corrections Special Committee on Serious Juvenile Offenders. He also served on the Hennepin County Juvenile Justice Task Force, the Minnesota Supreme Court Advisory Committee on Legal Representation of Juveniles, the Minnesota Juvenile Justice Task Force, and as coreporter for the Minnesota Supreme Court's Juvenile Court Rules Advisory Committee. Professor Feld is a member of the American Law Institute and was recently named a Fellow of the American Society of Criminology.

(continued on next page)



Dan L. Burk
Dale Carpenter
Bradley G. Clary



the Law: The Story of Lawrence v. Texas and is due to be published by W.W. Norton in 2007. Also coming out soon from Professor Carpenter is an article, "Bad Arguments Against Gay Marriage," in the *Florida Coastal Law Review*; an update of Professor Carpenter's white paper for the Cato Institute on the Federal Marriage Amendment; and book chapters on the *Lawrence* decision.

BRADLEY G. CLARY

Professor Clary, Sharon Reich Paulsen, and Michael Vanselow have published the second edition of their *Successful First Depositions* text (Thomson/West). Professor Clary continues to serve on the Communication Skills Committee of the American Bar Association Section of Legal Education, and is a principal contributor to the second edition of the ABA Sourcebook on Legal Writing Programs, which the ABA Press expects to release this spring. He and coauthor Pamela Lysaght just published the second edition of their *Successful Legal Analysis and Writing: The Fundamentals* text, for Thomson/West. He just finished a term on the governing council of the Minnesota State Bar Association Appellate Practice Section.

LAURA J. COOPER

In January, Professor Cooper presented a paper on labor arbitration at the Center for Labor and Employment Law at New York University. Her tribute to the career of University of Pennsylvania labor law professor Clyde Summers is being published in the *Employment Rights & Employment Policy Journal*. In the latter part of the spring semester, Professor Cooper is teaching a course, "Introduction to American Law," at the Uppsala University Faculty of Law in Sweden.

PRENTISS COX

Prentiss Cox completed the articles "Foreclosure Equity Stripping: Legal Theories and Strategies to Attack a Growing Problem," published in the *Clearinghouse Review Journal of Poverty Law and Policy*, volume 37 (March–April 2006), and

"Regulatory Perspectives and Initiatives," *Consumer Financial Services Litigation Institute*, Practising Law Institute, volume 2 (April 2006), which was selected for an "All-Star Briefing Award." Two of Professor Cox's students were interviewed about their case, *Jackson v. Wells Fargo*, for an article in *The Wall Street Journal*. Professor Cox was quoted in *Money* magazine (which earned him a follow-up KARE-TV story on mortgage fees), the *Omaha World-Herald* and *St. Petersburg Times* (discussing the issue of foreclosure equity stripping), and in a *Minneapolis Star Tribune* article on the Ameriquest settlement (based on his work while at the Minnesota Attorney General's Office). Professor Cox has given or will give presentations at the following national or regional conferences: National Consumer Law Center (Boston), the Financial Services Marketing Conference of the American Conference Institute (Washington, D.C.), for California Bay Area Legal Services (San Francisco) and at the Practising Law Institute (Chicago). He has also given the several local CLE training presentations for Minnesota CLE/MSBA, the Minnesota Legal Services Coalition, and the volunteer Lawyer's Network on topics including predatory lending, foreclosure equity stripping, credit reporting, and civil law enforcement actions.

ALLAN ERBSEN

Professor Erbsen's article "From 'Predominance' to 'Resolvability': A New Approach to Regulating Class Actions" was recently published in the *Vanderbilt Law Review*. His manuscript "The Substance and Illusion of Lex Sportiva" was published as a chapter in *The Court of Arbitration for Sport—1988–2004*, edited by Rob Siekmann et al. (2005). In January, Professor Erbsen spoke on a panel discussing Class action settlements at an American Bar Association conference in Utah. His current research focuses on interstate federalism, in particular on how the Constitution constrains the power of legislatures and courts in one state to regulate actors or activities in other states.



Laura J. Cooper
Prentiss Cox
Allan Erbsen

BARRY C. FELD

In November 2005, the American Society of Criminology named Professor Feld a fellow, one of the highest forms of professional recognition that the organization can confer, at the annual meeting in Toronto. Two of Feld's current research projects involve girls in the juvenile justice system and police interrogation of juveniles. He has given a number of presentations this past year on those topics, including: "Juveniles' Competence to Exercise *Miranda* Rights: An Empirical Study of Policy and Practice," School of Criminal Justice, April 3, 2006, Northeastern University, Boston; "Girls in the Juvenile Justice System," National Conference of Coordinating Council on Juvenile Justice and Delinquency Prevention, Jan. 11, 2006, Washington, D.C.; and "Police Interrogation of Juveniles: An Empirical Study of Policy and Practice," American Society of Criminology, Nov. 15, 2005, Toronto. Feld was recently reappointed as the Law School's Centennial Professor of law and gave his chair reappointment lecture, "Police Interrogation of Juveniles: An Empirical Study of Policy and Practice," on Nov. 8, 2005 at the Law School. Other recent presentations include: "Girls in the Juvenile Justice System," Girls Study Group, June 13, 2005, Alexandria, Va., and keynote speaker, "*In re Gault*: A Critical Retrospective," May 13, 2005, at the Minnesota Supreme Court's centenary observation of the creation of Minnesota's juvenile courts. Feld also maintains an active writing agenda. In 2004, West Publishing issued the Second Edition of his casebook, *Cases and Materials on Juvenile Justice Administration*, and will publish the 2006 Supplement to *Cases and Materials on Juvenile Justice Administration* in spring, 2006. He has published a number of book chapters and articles including: "Race and the Changing Jurisprudence of Juvenile Justice: A Tale in Two Parts, 1950–2000," in *Our Children, Other People's Children* (University of Chicago Press, 2005); "Guest Editorial Introduction: Juvenile Transfer," *Criminology & Public Policy* (2004); "The Inherent Tension of Social Welfare and Criminal Social Control: Policy Lessons From the American Juvenile

Court Experience" in *Juvenile Law Violators, Human Rights, and the Development of New Juvenile Justice Systems* (Hart Publishing, 2006); and with Margaret A. Zahn, Darrell Steffensmeier, Merry Morash, Meda Chesney-Lind, Jody Miller, Allison Ann Payne, Denise C. Gottfredson and Candace Kruttschnit, "Violence and Teenage Girls" (Washington D.C., Office of Juvenile Justice and Delinquency Prevention, 2006). He has also completed a book chapter, "Girls in the Juvenile Justice System," and an article, "Juveniles' Competence to Exercise *Miranda* Rights: An Empirical Study of Policy and Practice," which will be published in volume 91 of the *Minnesota Law Review*. His current research projects include girls in the juvenile justice system, police interrogation of juveniles, and a pre- and postlegal impact study to empirically assess the effects of 1995 changes in the Minnesota juvenile code.

MARY LOUISE FELLOWS

Professor Fellows graduated with her Ph.D. in English in October 2005. She presented a chapter of her dissertation, "Æthelgifu's Will and Christ's 'Will from the Cross,'" at the Modern Language Association's Annual Meeting in December, 2005. In January, she presented a paper, "Old and New Perspectives on Empirical Studies in Trusts and Estates," at the Association of American Law Schools' Annual Meeting. In celebration of her reappointment to the Everett Fraser Professor of Law Chair, she presented a lecture "From Beowulf to Æthelgifu: Lessons on Anglo-Saxon Will-Making." In addition, she has a commentary, "Why the Generation-Skipping Transfer Tax Sparked Perpetual Trusts," forthcoming in the *Cardozo Law Review*.

RICHARD S. FRASE

Professor Frase recently published three articles and an essay: "Punishment Purposes" was published in the *Stanford Law Review*; "Why Minnesota Will Weather *Blakely's* Blast" (coauthored with Dale G. Parent), appeared in the *Federal Sentencing Reporter*; and "The Warren Court's Missed



Professor Barry Feld is joined by his wife, Patricia Feld, his aunt Clare Schwartz, his mother, Flora Feld, and his daughter, Julia Feld, at his Centennial Professor of Law Reappointment Lecture.

The Centennial Professorship in Law was established through the generosity of many Law School alumni during the 1986–1989 Endowment for Excellence Campaign. The following Law School graduates contributed principal support for this important professorship: Kenneth M. Anderson, Roger S. Barrett, Lee Bearmon, J. Steven Bergerson, E. Lawrence Brevik, Howard E. Buhse, Louise B. Christianson, A.W. Clausen, William E. Drake, Lucy W. Elmendorf, Reginald B. Forster, Emanuel Gyler, Terrance and Ruth Hanold, Louis W. Hill, Jr., Paul O. Johnson, Robert M. Kommerstad, Daniel T. Lindsay, Walter F. Mondale, John S. Pillsbury, Jr., Paula K. and S. Walter Richey, Irving J. Shapiro, Melvin C. Steen, and R. Sheffield West.



THE HENRY J. FLETCHER PROFESSORSHIP IN LAW APPOINTMENT LECTURE

On Nov. 29, 2005, Bradley C. Karkkainen presented his lecture, "Law's Ecology," on the occasion of his appointment to the Henry J. Fletcher Professorship in Law. Professor Karkkainen was the 2004 Julius E. Davis Professor of Law and is a nationally recognized authority in the fields of environmental and natural resources law. After visiting at the Law School in the fall of 2003, Professor Karkkainen joined the faculty permanently in January 2004. Professor Karkkainen holds a B.A. in Philosophy (1974) from the University of Michigan and a J.D. (1994) from Yale Law School, where he taught legal research and writing as a teaching assistant in 1993–94. He served as an editor of both the *Yale Law Journal* and the *Yale Journal of International Law*. He is a principal investigator in the Project on Public Problem-Solving, an interdisciplinary collaborative research effort at Columbia University, Harvard University, the University of California-Berkeley, and the University of Minnesota that is investigating innovative regulatory designs and mechanisms for public service delivery across a variety of policy domains. In the summers of 2002 and 2004, Professor Karkkainen held an appointment as guest investigator at the Woods Hole Oceanographic Institution Marine Policy Center in Woods Hole, Mass., a leading center for marine science and policy studies.

Henry J. Fletcher was a distinguished professor at the Law School, where he taught from 1896 until 1929 and founded the *Minnesota Law Review*. The professorship was established by Miriam Fletcher Bennett, daughter of Professor Fletcher. Mrs. Bennett was a writer whose memoirs *Lights and Shadows* were published in 1986.



Barry C. Feld
Mary Louise Fellows
Richard S. Frase



Opportunities in Substantive Criminal Law" was published in *The Ohio State Journal of Criminal Law*. The essay, "Proportionality Principles in the American System of Criminal Justice," appeared in the Fall 2005 issue of the Law School's *Perspectives* magazine. In November 2005, Professor Frase presented two papers at an international conference on the role of criminal defense attorneys, held in Cologne, Germany. In December he made a presentation to a MacArthur Foundation research workgroup on the broader implications of the Supreme Court's 2005 decision in *Roper v. Simmons* (forbidding capital punishment for crimes committed before age 18).

DANIEL J. GIFFORD

Professor Gifford has just completed an article, "Tensions in International Trade," which will soon be published in the *Minnesota Journal of International Trade*. He and Humphrey Institute Professor Robert Kudrle are in the initial stages of a study of the role of price discrimination in the antitrust laws of the United States and the European Union. Professor Gifford is also writing a piece on the Supreme Court's decision last summer in the *Brand X* litigation. He is also completing a manuscript reviewing U.S. labor policy and proposing changes. In November, he was a faculty member at a Sedona Conference session on Antitrust Law and Litigation. He has also been participating in drafting a report on the role of economics in antitrust law for that conference, a project that is nearing completion. During the last several months, Professor Gifford has been developing a new Law School course on industrial policy which examines, from a comparative perspective, the role of government in the economy in a variety of sectors ranging from labor policy to trade policy to policies affecting technological advance.

OREN GROSS

Professor Gross returned to Minneapolis in January after spending most of 2005 as a visiting professor at the Transitional Justice Institute (TJI) at the University of Ulster, Northern Ireland, where he visited

under a fellowship from the British Academy. While at the TJI, Professor Gross completed work on a book (coauthored with Professor Fionnuala Ní Aoláin) entitled *Law in Times of Crisis: Emergency Powers in Theory and Practice* (Cambridge University Press, 2006). The book represents the first systematic and comprehensive attempt by legal scholars to conceptualize the theory of emergency powers. It considers post-September 11th developments against more general theoretical, historical, and comparative backgrounds. Professor Gross also completed work on three other publications that are scheduled to appear shortly: "Control Systems and the Migration of Anomalies" a book chapter in *Migration of Constitutional Ideas* (Cambridge University Press, 2006); "What Emergency Regime?" *Constellations* (2006); and "The Concept of 'Crisis': What Can We Learn from the Two Dictatorships of L. Quinctius Cincinnatus?" a book chapter in *Diritti Civili ed Economici in Tempi di Crisi* (2006). In addition, he contributed another book chapter, "Stability and Flexibility: A Dicey Business" to *Global Anti-Terrorism Law and Policy*, (Cambridge University Press, 2005) and an article "Preventive Interrogational Torture" published in *The Global War on Terrorism: Executive Branch Challenges in Forming Counterterrorism Policy* (Institute for National Security and Counterterrorism at Syracuse University 2006). In February Professor Gross delivered his inaugural lecture as the Irving Younger Professor of Law. The lecture, "The Cusps of Law," discussed the issue of humanitarian intervention. In addition Professor Gross has recently presented a talk on "Humanitarian Intervention: Law and Morality in Extremis" at the University of Miami School of Law and the opening lecture, "El Derecho de la Seguridad: entre la normalidad interior y la excepcionalidad exterior" at a conference held at the Universidad de Santiago de Compostela, Spain. Professor Gross also presented two papers to the TJI seminar.

RALPH F. HALL

Professor Hall has been engaged in speaking and writing on a variety of subjects in the Food and Drug Administration (FDA)



Daniel J Gifford
Oren Gross
Ralph F. Hall

area. He has been heavily involved in the current debate regarding medical device recalls. In the fall he participated in a major policy conference in Washington, D.C., co-sponsored by the FDA on medical device recalls. He has also published articles on this subject in the *Minnesota Journal of Law, Science & Technology* and in a publication of the Food and Drug Law Institute. He has provided assistance to the Heart Rhythm Society on issues of patient communication and risk. In addition, he prepared an article for the Washington Legal Foundation on the intersection of the First Amendment and pharmaceutical and medical device regulation. During the past year he spoke at a number of seminars, including programs sponsored by Medical Alley (recently renamed Life Science Alley) and the Indiana Medical Device Manufacturers Council.

JILL ELAINE HASDAY

Professor Hasday published an article, "Intimacy and Economic Exchange," in the *Harvard Law Review* (December 2005). On October 12, she gave a lecture on intimacy and economic exchange as an Edward W. Clyde Scholar at the University of Utah College of Law. Last fall, Professor Hasday also created and organized the first Public Law Workshop series at the Law School. The workshop brought nationally recognized scholars to Minnesota to present their current research on public law topics such as constitutional law, administrative law, anti-discrimination law, criminal law, environmental law, and family law.

JOAN S. HOWLAND

Professor Howland is completing an article, "Bibliocide: Banned in Boston, Burned in Berkeley: Silenced Authors and Freedom of Expression," based on the paper she presented in October 2005 at her reappointment lecture to the Roger F. Noreen Chair in Law. Professor Howland will be the keynote speaker and will present a paper entitled "Protection and Preservation of Indigenous Cultures in the 21st Century" in Buenos Aires at a conference sponsored by the governments of Argentina, Brazil, Uruguay, and Chile.

She will return as a speaker at the 2006 Sovereignty Symposium, sponsored by the Supreme Court of Oklahoma, and present a paper, "Expressing Our Values Through Our Actions." Professor Howland will serve as the chair of the American Bar Association sabbatical site evaluation team visiting the Vermont Law School in spring 2006. She continues to serve as a member of the ABA Section on Legal Education and Admission to the Bar Accreditation Committee. She also is a member of the American Association of Law Schools Committee on Research and the Law School Admissions Council Misconduct and Irregularities in the Admission Process Subcommittee. Professor Howland serves as treasurer for the Joint Conference of Librarians of Color to be held in October of 2006, as well as a member of the executive board and treasurer of the American Indian Library Association.

HEIDI KITROSSER

Professor Kitrosser recently published "Containing Unprotected Speech" in the *Florida Law Review*. She also coorganized a symposium at Brooklyn Law School in the fall entitled Justice Blackmun and Judicial Biography: A Conversation With Linda Greenhouse. At the symposium, Professor Kitrosser moderated a panel on Supreme Court secrecy with speakers Linda Greenhouse, Harold Koh, and Ed Lazarus. She will write the introduction to the symposium issue of the *Brooklyn Law Review*. Professor Kitrosser currently is working on a number of projects relating to presidential secrecy, including an article draft, "Secrecy and Separated Powers: Executive Privilege Revisited." She presented the draft at a University of Minnesota Law School workshop in October and will present the draft at Washington University in St. Louis in June. She also has an op-ed piece forthcoming in the online site *JURIST* (<http://jurist.law.pitt.edu/>) on presidential secrecy and the NSA spying controversy. Additionally, she has committed to contribute several essays to the upcoming edition of the *Encyclopedia of the First Amendment* (Congressional Quarterly Press, 2007).



THE VANCE K. OPPERMAN RESEARCH SCHOLARSHIP APPOINTMENT

This spring, Gregg Polsky was appointed the Vance K. Opperman Research Scholar. A reception was held in the Dean's Conference Room on March 9, 2006, to commemorate the appointment. Professor Polsky joined the faculty in 2001, and teaches and writes in the areas of tax law and policy. Previously, he taught at the University of Florida College of Law and practiced tax law with White & Case LLP, headquartered in New York. In addition to his teaching and scholarship, Professor Polsky is of counsel to Dorsey & Whitney LLP, in Minneapolis.

The Vance K. Opperman Research Scholar Award enables the Law School to retain emerging faculty stars by providing support for their research and the development of their scholarly interests. The award is made possible by an unrestricted gift from Vance K. Opperman, '69, an outspoken business and civic leader with interests in the legal, intellectual, political, technological, and economic areas.



THE IRVING YOUNGER PROFESSOR OF LAW APPOINTMENT LECTURE

On Feb. 14, 2006, Oren Gross presented “The Cusps of Law” in the Law School’s Lockhart Hall, marking his appointment as the Irving Younger Professor of Law. Professor Gross is an internationally recognized expert in the areas of national security law, international law, international trade, the Middle East, and the Arab-Israeli conflict. He holds an LL.B., *magna cum laude*, from Tel Aviv University in Israel, where he served on the editorial board of the *Tel Aviv University Law Review*, and obtained both his LL.M. and S.J.D. from Harvard Law School while a Fulbright Scholar. Professor Gross was a member of the faculty of the Tel Aviv University Law School from 1996 to 2002; he has also taught and held visiting positions at Princeton University; the Benjamin N. Cardozo School of Law; the Max Planck Institute for International Law and Comparative Public Law in Heidelberg, Germany; the Transitional Justice Institute in Belfast (while a British Academy visiting professor); Queen’s University in Belfast; and Brandeis University. Between 1986 and 1991, he served as a senior legal advisory officer in the international law branch of the Israeli Defense Forces’ Judge Advocate General’s Corps. In 1998, he served as the legal adviser to an Israeli delegation that negotiated an agreement with the Palestinian Authority’s senior officials concerning the economic

(continued on next page)



Jill Elaine Hasday
Joan S. Howland
Heidi Kitrosser



JOHN H. MATHESON

Professor Matheson taught a course on Comparative Corporate Governance to 49 international students at Bucerius Law School, the first private law school in Germany, this past fall. The students came from many different countries, including Argentina, Australia, Canada, China, Peru, Spain, The Netherlands, Singapore, South Korea, Sweden, Turkey, and the United States. The course covered the corporate governance systems primarily of the United States, Germany, and Japan, comparing and contrasting governance styles and systems, and addressing topics ranging from voting rights to codetermination to insider trading, from Japanese Keiretsu to German Konzernrecht. In addition, Professor Matheson published “Challenging Delaware’s Desirability as a Haven for Incorporation,” *William Mitchell Law Review* (2006) with Philip S. Garon and Michael A. Stanchfield, and the “American Bar Association,” “Common Law,” “Directed Verdicts,” “Freedom of Contract” and “Summary Judgment” entries in *The Encyclopedia of Civil Liberties in America* (M.E. Sharpe Inc., 2005).

FRED MORRISON

Professor Morrison was the coleader of a week-long workshop with the judges of the newly appointed Constitutional Court of Sudan and the Supreme Court of Southern Sudan at Wad Madani, Sudan, in February. The two new courts will be hearing cases involving constitutional and human rights issues in that country. The advocate general (attorney general) of Sudan also attended the conference. Professor Morrison has also written two chapters of the commentary on the new Code of Criminal Procedure for Kosovo. His current writing is on the differences between European and American approaches to questions of international law.

MYRON ORFIELD

Professor Orfield’s article, “Racial Integration and Community Revitalization: Applying the Fair Housing Act to the Low Income Housing Tax Credit,” was published in late 2005 in the *Vanderbilt*

Law Review. His article “Land Use and Housing Policies to Reduce Concentrated Poverty and Racial Segregation” will appear in the *Fordham Urban Law Journal* in 2006. Additional forthcoming publications include “Combining State Equal Protection and School Choice to Achieve Metropolitan School Integration: The Hope of the Minneapolis Desegregation Settlement,” which will appear in the University of Minnesota’s *Law and Inequality*, and a piece in the Segregation and Environmental Justice Issue of the *Minnesota Journal of Law, Science and Technology*. In his work at the Institute on Race & Poverty (IRP), he has coauthored numerous reports, including “Access to Growing Job Centers in the Twin Cities Metropolitan Area,” with Thomas Luce and Jill Mazullo, which will appear in the *CURA Reporter*. He and IRP staff continue research on the Choice Is Yours school desegregation program in Minneapolis and its western suburbs, and are completing an analysis of patterns of minority suburbanization in 15 major U.S. metropolitan regions for the Detroit Branch of the NAACP and the Ford Foundation.

GREGG D. POLSKY

Professor Polsky recently published two articles: “Taxing the Promise to Pay” in the *Minnesota Law Review* (2005), with Professor Brant J. Hellwig, and “Regulating Section 527 Organizations” in the *George Washington University Law Review* (2005), with Professor Guy-Uriel Charles. He also recently completed work on another article titled “Reforming the Taxation of Deferred Compensation,” with Professor Ethan Yale, which he presented (along with Professor Yale) in January 2006 at the Northwestern University School of Law, as part of Northwestern’s tax colloquium speakers series. This article examines the current tax treatment of nonqualified deferred compensation and suggests reforms that would create more efficient and equitable results without adding undue complexity.



John H. Matheson
Fred Morrison
Myron Orfield

KEVIN R. REITZ

Professor Reitz recently published two articles: "The Enforceability of Sentencing Guidelines," in volume 58 of the *Stanford Law Review* (2005), and "The New Sentencing Conundrum: Policy and Constitutional Law at Cross-Purposes," in volume 105 of the *Columbia Law Review* (2005). In February 2006 he presented a new paper, "Don't Blame Determinacy: U.S. Incarceration Growth Has Been Driven by Other Forces," at the University of Texas Law School. This paper will be forthcoming in the June 2006 issue of the *Texas Law Review*. Professor Reitz has been working on an ongoing basis with a number of states that are trying to improve their laws concerning sentencing and corrections. He is a founding member of the Colorado Lawyers' Committee Task Force on Sentencing Reform, he actively assists the Minnesota Sentencing Guideline Commission with current projects, and has helped organize a conference at the Stanford Law School to consider sentencing reform in the State of California. Professor Reitz also continues his work as reporter for a revision of the Model Penal Code's articles on sentencing and corrections. He presented a large draft of proposed amendments to the code at the annual meeting of the American Law Institute in May 2006. The draft is available from Professor Reitz (reitz027@umn.edu). Professor Reitz's book with Henry Ruth, *The Challenge of Crime: Rethinking Our Response* (2003), was issued in a paperback edition this spring by Harvard University Press.

STEPHEN M. SIMON

Professor Simon taught the Defense and Prosecution Clinics in the spring and fall of 2005, and Trial Practice during the summer of 2005. He conducted 12 Judicial Trial Skills Training Programs at the Law School from April 2005 through February 2006. In October 2005 Professor Simon taught two programs at the annual Minnesota new judge orientation program Evidence in the Courtroom and Alcohol and the Intoxilyzer. He also taught the Evidence in the Courtroom program at the General Jurisdiction course for new judges at the National Judicial College in

April, July, and October 2005. In March 2005 Professor Simon taught a day-long CLE on Ethics and the Practice of Criminal Law and Identification and Elimination of Bias at the Law School's annual Super CLE program. In February 2006, along with Minnesota attorneys Heidi Drobnick and Tammy Swanson, he conducted a simulation-based education program on courtroom and trial management for Tribal Court Judges at the annual course, "Essential Skills for Tribal Court Judges" at the National Judicial College. Professor Simon gave two research presentations at the National Science Foundation Transportation Research Board 2006 annual conference in Washington, D.C., in January 2006. One was on his ongoing research into the relationship between the type of implied consent DWI alcohol concentration test, the time to license revocation associated with the type of test, and DWI recidivism. The other was on a joint technology and traffic safety project he is working on with the University of Minnesota's Department of Mechanical Engineering. The project, In-Vehicle Technology to Correct Teen Driving Behavior: Addressing Patterns of Risk, involves building a car that has a variety of technologies that monitor a teen's driving conduct, warns them when they are exceeding the speed limit or accelerating too rapidly, and records their driving behavior for later review by their parents (the technology also includes a seat belt and alcohol ignition interlock). A test vehicle has been built and is currently undergoing testing, and Professor Simon has coauthored and submitted a paper on this topic. In his capacity as head of the Minnesota Criminal Justice System DWI Task Force and as a DWI researcher Professor Simon testified numerous times at the 2005 Minnesota Legislature on DWI-related legislation. During summer and fall 2005 he completed the 2005 update of his coauthored book, *Minnesota Misdemeanors and Moving Traffic Violations*. Currently, he is working on research related to administrative vehicle forfeiture and DWI recidivism and the type of implied consent alcohol concentration test, time to license revocation, and DWI recidivism.



Professor Oren Gross, Professor Judith Younger, and Dean Alex M. Johnson, Jr.

component of a permanent status agreement between Israel and Palestine. Professor Gross joined the Law School in 2002 and was appointed as the Vance K. Opperman research scholar in 2003 and the Julius E. Davis Professor of Law in 2004. In 2004 he also was the recipient of the John K. & Elsie Lampert Fesler Research Grant. His book *Law in Times of Crisis* was published in 2006 by Cambridge University Press. Professor Gross practiced law at Sullivan and Cromwell in New York from 1995 to 1996.

The Irving Younger Professorship in Law was established through the generosity of colleagues, friends, and admirers of the late Professor Irving Younger, who was the first Marvin J. Sonosky Professor of Law at the Law School. Professor Younger was perhaps the best-known law teacher in the United States, and his love for language and the lawyer's craft inspired a generation of law students and lawyers.



THE EVERETT FRASER CHAIR IN LAW REAPPOINTMENT LECTURE

On Feb. 7, 2006, Mary Louise Fellows presented her lecture, "From Beowulf to Æthelgifu: Lessons from Anglo-Saxon Will-Makers," to commemorate her reappointment as the Everett Fraser Chair in Law. Professor Fellows is a nationally recognized scholar in the areas of trusts and estates, federal tax law, and feminist jurisprudence. She has published articles widely on diverse topics ranging from taxation to same-sex partnerships and prostitution. She also has coauthored casebooks on wills and trusts and feminist jurisprudence as well as coedited books on the federal tax system, and on law and feminism. She teaches courses on wills and trusts, estate planning, taxation, and feminist theory. Upon graduation from the University of Michigan Law School, *magna cum laude*, she joined the faculty of the University of Illinois College of Law, and in 1982, she became a professor at the University of Iowa College of Law. In addition to serving as a tenured member of these faculties, Professor Fellows has visited at Columbia University Law School, Cornell University Law School, Harvard University Law School, and the University of Michigan Law School. She was the Visiting Everett Fraser Professor of Law at the Law School during the 1989–90 academic year and was named

(continued on next page)

Gregg D. Polsky
Kevin R. Reitz
Stephen M. Simon



E. THOMAS SULLIVAN

Provost Sullivan has served this year as a manuscript reviewer for the University of Chicago Press. He published an op-ed "The Value of Teaching in a Research University," in *The Minnesota Daily* in October 2005 and he has submitted his book proposal, *The Emerging Doctrine of Proportionality in the United States*, with Richard Frase, to several university presses. He continues to serve as provost of the University of Minnesota and has become a trustee of the University of Minnesota Foundation.

KEVIN K. WASHBURN

Professor Washburn had a busy fall semester. In September, he testified before the U.S. Senate Committee on Indian Affairs on Indian gaming matters and also presented papers at the University of Colorado-Boulder and the University of Arizona on issues related to criminal justice in Indian country. In October, Professor Washburn appeared at a symposium, Indian Law at the Crossroads, at the University of Connecticut, where he presented a paper, "Tribal Self-Determination at the Crossroads." Also in October, Professor Washburn was named to the six-member Executive Board of Editors of *Cohen's Handbook of Federal Indian Law*, for purposes of revisions, updates, and future editions (Professor Washburn served as an author on the recent revision that appeared in December). The spring semester has been busy as well. In January he presented a paper on Indian country criminal justice at the University of North Dakota in Grand Forks. In February, his article "American Indians, Crime and the Law," was published in the *Michigan Law Review*. Professor Washburn continues to serve as a member of the Minority Affairs Committee of the Law School Admission Council and is chairing a subcommittee. He has also continued to consult informally with the Center for Civic Education. Professor Washburn has accepted an offer to visit at the Harvard Law School for the school year of 2007–08, where he will teach American Indian law, first year criminal law, and gaming law.

DAVID WEISSBRODT

In August 2005 Professor Weissbrodt was elected for a two-year term on the eight member International Executive Committee of Amnesty International, representing 1.8 million members in more than 150 nations. In September 2005 he presented an introduction to "United Nations Human Rights Procedures" for a Continuing Legal Education Program in Minneapolis entitled "International Advocacy on U.S. Human Rights Cases." In December 2005 he gave a CLE lecture for the Minnesota Attorney General's office in St. Paul, "The Absolute Prohibition of Torture and Ill-Treatment." For a week in late January and early February 2006 he served as a member of the five-member Board of Trustees of the U.N. Voluntary Trust Fund for Contemporary Forms of Slavery, which distributes support for nongovernmental projects to assist persons who have been trafficked or who were otherwise victims of contemporary forms of slavery. In February Professor Weissbrodt taught classes at Tilburg University and Utrecht University in the Netherlands on the "U.S. Approach to International Human Rights Law." He coauthored a chapter in a book published by Oxford University Press on Non-State Actors and Human Rights. He also coauthored an article in the new *Minnesota Journal of International Law* on "Physician Testimony in International Criminal Trials." In addition, he wrote a brief introduction for an article by Professor Donald Marshall published in the *Minnesota Law Review*. He also has several additional articles forthcoming in the *Harvard Human Rights Journal*, the *Human Rights Quarterly*, and the *University of Cincinnati Law Review*.

SUSAN M. WOLF

Professor Wolf published an article in *Science* on "Incidental Findings in Brain Imaging Research" with Dr. Judy Illes (Stanford University) and others. This grew out of a National Institutes of Health (NIH)/Stanford meeting that she helped lead. The group is now working on a further article. She is also collaborating with Professor Mildred Cho (Stanford University) and others on a consensus



E. Thomas Sullivan
Kevin K. Washburn
David Weissbrodt

paper on offering research results to human subjects in large-scale genomic research. Professor Wolf is leading a two-year NIH-funded project at the University of Minnesota's Consortium on Law and Values in Health, Environment & the Life Sciences on "Managing Incidental Findings in Human Subjects Research." Coinvestigators are Professors Frances Lawrenz, Jeffrey Kahn, and Charles Nelson (Harvard University). The national working group met in December 2005 and April 2006. Professor Wolf and colleagues from the consortium submitted a grant proposal to the National Science Foundation on evaluating oversight models for nanotechnology. Coinvestigators are Professors Efrosini Kokkoli, Gurumurthy Ramachandran, and Jennifer Kuzma; and Jordan Paradise. Professor Wolf also collaborated on a grant proposal to the Minnesota Partnership on Biotechnology to develop guidelines on DNA biobanking. The principal investigator is Professor Barbara Koenig (Mayo Clinic College of Medicine and University of Minnesota); Professors Wolf and Kahn are coinvestigators. Professor Wolf is completing an article on "Doctor and Patient: An Unfinished Revolution" for the *Yale Journal of Health Law, Policy & Ethics*. She and Professor Kahn also have an article forthcoming in the *Journal of Law, Medicine & Ethics* on "Genetic Testing in Disability Insurance: Ethics, Law & Policy." They are editing a symposium on this topic to be published with the article. Professor Wolf is editing another forthcoming symposium for the *Journal of Law Medicine & Ethics* on "Proposals for the Responsible Use of Racial and Ethnic Categories in Biomedical Research." She recently published an article on this topic in *Nature Genetics*. Professor Wolf has been writing an article on "Death and the Written Word: A Normative Theory of Advance Directives" growing out of a lecture she gave at the University of Chicago Law School. Professor Wolf drafted two entries for The *World Book Encyclopedia* on "Euthanasia" and "Living Will." She also published an op-ed after the Supreme Court's decision in *Gonzales v. Oregon* on "Court Ruling Doesn't Answer Assisted Suicide Questions" in the *St. Paul Pioneer*

Press. Professor Wolf continues to chair the University's Consortium on Law and Values in Health, Environment & the Life Sciences (lifesci.consortium.umn.edu) and directs the Joint Degree Program in Law, Health & the Life Sciences (jointdegree.umn.edu). The programs have offered 10 events this year, including an upcoming conference on the law and ethics of protecting the food supply from bioterrorism and a symposium on analyzing and regulating the risks of new biomedical technologies. The Consortium continues to publish the *Minnesota Journal of Law, Science & Technology* (mjlst.umn.edu) twice a year; Professor Wolf serves as executive editor. She collaborates with Professor Kahn and others in founding a new organization in 2005 for directors of bioethics programs; representatives have now met with the director of NIH on bioethics funding priorities. Professor Wolf recently participate in an American Academy of Arts & Sciences meeting on the societal implication of neuroscience. She lectured at the 2005 Human Research Protection Program Conference in Boston. She appeared on Minnesota Public Radio, reviewing key developments in medicine in 2005.

JUDITH T. YOUNGER

Professor Younger gave newspaper and radio interviews on the complications of the Binger estate and the issues raised by the *Kelo* case decision on eminent domain. She wrote "Whose America?", which is forthcoming in *Constitutional Law Commentary* and is working on an article dealing with antenuptial, postnuptial, and cohabitation agreements. She appeared in all four performances of the annual TORT show, *West Bank Story*, playing herself, and is currently teaching Property and Family Law.

Affiliated Faculty

TIMOTHY R. JOHNSON

Professor Johnson recently published an article with James F. Spriggs II and Paul J. Wahlbeck in the *American Political Science Review* (Vol. 100, #1), which demonstrates that the quality of oral argumentation presented to the U.S. Supreme Court



Professor Mary Louise Fellows and Toni A. McNaron, professor of English, emerita, University of Minnesota.

the Everett Fraser Professor of Law in 1990. She recently completed her Ph.D. in English at the University of Minnesota; her dissertation is a cultural study of an Old English will written by a wealthy widow in the late 10th century. Professor Fellows is a member of the American Law Institute, and is an adviser for the Restatement of the Law, Third-Property (Donative Transfers), and for the Restatement of Law, Third-Trusts. She serves as the representative of law schools on the joint editorial board for *Uniform Trust and Estate Acts*. In 2004 and 2005 she served as reporter for the Task Force for Transfer Tax Reform, which had representatives from a number of professional groups including the American Bar Association's Section on Real Property, Probate and Trust Law; the American Bar Association's Section of Taxation; and the American College of Trust and Estate Counsel.

Everett Fraser was the third dean of the Law School and served as dean from 1920 to 1948, the longest tenure of any of the Law School's deans. He led the Law School to academic excellence and to a position of leadership among the nation's law schools. Many of the innovative programs established under his leadership fostered curricular change in legal education throughout the nation. The Everett Fraser Chair in Law was established through the generosity of a Law School alumnus, the late James H. Binger, '41. Mr. Binger, former CEO of Honeywell Inc., and a Broadway theatre owner, was widely recognized for his corporate leadership and quiet philanthropy to man educational, medical, and social-advancement organizations.

FACULTY WORKS IN PROGRESS FALL 2006

JANUARY

- 19 Professor Bernard M. Levinson,**
University of Minnesota and University
of Minnesota School of Law

*The First Constitution: Rethinking the
Origins of Rule of Law and Separation
of Powers in Light of Deuteronomy*

- 26 Professor Richard H. Fallon,**
Harvard Law School

Strict Judicial Scrutiny

FEBRUARY

- 2 Professor Mark V. Tushnet,**
Georgetown University Law Center

*Weak Courts, Strong Rights: Judicial
Review and Social Welfare Rights in
Comparative Constitutional Law*

- 9 Professor Chantal Thomas,**
Visiting Professor University of
Minnesota Law School; Professor of
Law, Fordham Law School

Democracy in the Fast Lane



Susan M. Wolf
Judith T. Younger
Timothy R. Johnson



affects the decisions justices make. He was also involved in an American Bar Association Dialogue with Jason Roberts of the University of Minnesota on the process of selecting Supreme Court justices. This dialogue appeared in *Focus on Law Studies* (2006). Most recently, Professor Johnson was awarded a \$53,922 National Science Foundation grant (SES-0550276, total grant \$284,440, with James F. Spriggs II and Paul J. Wahlbeck) to examine the establishment of *stare decisis* as a norm in the American legal system. He gave a recent talk, "The Influence of Oral Arguments on the U.S. Supreme Court," at Vanderbilt Law School. Professor Johnson also is engaged in two ongoing research projects. The first examines the dynamics of the court's agenda setting process. This project formally and empirically examines why the court continues to follow the Rule of 4. The second project focuses on how justice begin to build coalitions with one another during oral arguments.

JANE E. KIRTLEY

Professor Kirtley delivered a lecture, "Reporter's Privilege Redux: A Reflection on the Reporter's Privilege in the United States, 1995-2005," at the A IDEM/Canadian National Media Lawyer Association Annual Conference in Halifax, Nova Scotia, on Nov. 12 2005. Other lectures include "Shooting the Messenger, or Shooting Ourselves in the Foot? Challenges to a Free Independent Press," as part of the September Project Lecture Series at Gustavus Adolphus College in St. Peter, Minn. on Nov. 17, 2005; "The Right to be Wrong: Current Issues in Media Ethics and Law," the final lecture in the series "A Question of Ethics" sponsored by the St. Croix Valley Chapter of the University of Minnesota Alumni Association; and "Media Ethics" at the Minneapolis Uptown Rotary Club on Jan. 5, 2006. She moderated two panel discussions: "The End of Journalism? Why News Still Matters," at Coffman Union on Feb. 20, 2006, and "Protecting Sources by Going to Jail: Is There a Better Way?" at the New England Press Association annual convention in Boston on Feb. 10, 2006. She moderated a Town Hall Talk, "How

Do We Restore Our Credibility?," and appeared on a panel, "Ethics: New Threats, New Frontiers," at the Southern Newspaper Publishers Foundation ethics conference in Oklahoma City on Dec. 2, 2005. Other panel appearances include "News-gathering, Right of Privacy and Related Torts," at the Practising Law Institute's annual Communication Law conference in New York on Nov. 10, 2005; "Freedom of Speech: Do the Same Press Rules Apply in a Changing Media Landscape?" at the NABEF National Freedom of Speech Program at the National Press Club in Washington, D.C., on Oct. 18, 2005; and "Challenges to a Free Press" at the Society of Professional Journalists National Convention in Las Vegas on Oct. 16, 2005. Professor Kirtley was also a panelist at the Washington New Council's Public Forum in Spokane, Wash., on Feb. 8, 2006, critiquing controversial newsgathering techniques used in the local newspaper's investigation of the city's mayor, which led to his recall. She also took part in a post-screening discussion about civil liberties with actor David Strathairn and ACLU of Minnesota Executive Director Chuck Samuelson following the Twin Cities premiere of *Good Night and Good Luck* at the Walker Art Center in Minneapolis on Oct. 8, 2005. Professor Kirtley was a judge for the Scripps Howard Foundation National Journalism Awards in Cincinnati on Feb. 23-24, 2006. She was widely quoted in (or appeared on) numerous media outlets, including the *Atlanta Journal-Constitution*, *American Prospect*, *Associated Press*, *Chattanooga Times Free Press*, *Columbia Journalism Review*, *Editor & Publisher*, Gannett News Service, *Globe and Mail* (Toronto), *International Herald Tribune*, *Los Angeles Times*, Marketplace, *Minneapolis Star Tribune*, Minnesota Public Radio, *New York Sun*, *New York Times*, *News-Press* (Fort Myers, Fla.), Reuters, *St. Cloud Times*, *St. Paul Pioneer Press*, *Spokesman-Review* (Spokane, Wash.), *Technology Daily*, and *Wall Street Journal*. She was a guest on WNYC/NPR's "On the Media," Air America's "The Wendy Wilde Show," and "The Jack Rice Show" on WCCO Radio, and on two editions of Gary Eichten's "Middy" program on MPR.



Jane E. Kirtley
 Bernard M. Levinson
 Karen Miksch
 Robin Stryker

BERNARD M. LEVINSON

Dr. Levinson was named a Wissenschaftskollegzu Berlin, Research Fellow for 2007–2008; he is one of only eight international scholars in different fields of the humanities and social and natural sciences chosen to hold this fellowship at Germany's Institute of Advanced Study. This support will allow him to begin an uninterrupted year of work on a new book on the relation between ancient legal hermeneutics and contemporary problems of constitutional theory. His article, "The First Constitution Rethinking the Origins of Rule of Law and Separation of Powers in Light of Deuteronomy," published in the *Cardozo Law Review*, marks the movement of his research into a new area of cross-disciplinary inquiry and illustrates the overlooked contribution of the Hebrew Bible to the development of modern law. Dr. Levinson has published a book, *L'herméneutique de l'innovation: Canon et exégèse dans l'Israël biblique*, and has several articles either published forthcoming, or under consideration, including: "Du sollst nicht hinzufügen und nichts wegnehmen," in *Zeitschrift für Theologie und Kirche*; "The Birth of the Lemma: The Restrictive Reinterpretation of the Covenant Code's Manumission Law by the Holiness Code (Leviticus 25:44-46)," in the *Journal of Biblical Literature*; "The 'Effected Object' in Contractual Legal Language: The Semantics of 'If You Purchase a Hebrew Slave' (Exodus xxxi 2)," forthcoming in *Vetus Testamentum* in September 2006; "The Manumission of Hermeneutics: The Slave Laws of the Pentateuch as a Challenge to Contemporary Pentateuchal Theory," in *Congress Volume, Leiden* 2004; and "Deuteronomy's Conception of Law as an 'Ideal Type': A Missing Chapter in the History of Constitutional Law," forthcoming in *Ma'arav: A Journal for the Study of the Northwest Semitic Languages and Literatures* in August 2006. Dr. Levinson also continues work on his book *Revelation and Redaction: Rethinking Biblical Studies and Its Intellectual Models*, which is under contract with Oxford University Press. Dr. Levinson read refereed papers at an international conference, "Textualization of Religion," at Eberhard-

Karls-Universität Tübingen in Germany; at the University of Zurich; at the Society of Biblical Literature Annual Meeting in Philadelphia; and at the Upper Midwest Regional Meeting of the Society of Biblical Literature at Luther Seminary in St. Paul. Dr. Levinson serves as a member of the steering committee for the Center for Jewish Studies and the Faculty Summer Research Proposal Review Committee, and on the editorial board of *Zeitschrift für Altorientalische und Biblische Rechtsgeschichte*. During the spring semester Dr. Levinson taught a course, Biblical Law and Jewish Ethics, which was cross-listed with the Law School.

KAREN MIKSCH

Assistant Professor Miksch researches the law of higher education and became an affiliate faculty member in Fall 2005. She delivered a symposium at the annual conference of the Association for the Study of Higher Education (ASHE) in November 2005. The symposium, "Challenges to Race-Targeted and Race-Conscious Pre-college, Summer-Bridge, and Retention Programs," was part of the ASHE Public Policy Forum. In addition, she was an invited participant at the Fall 2005 Education Law Association's "Innovative Approaches in Teaching School Law." She also delivered her paper "The Courts and Education: How Lawyers and Researchers Should Work Together" at the Education Law Association conference based on a case study, including her interviews with social scientists and attorneys working together on seminal education litigation. The Social Science Research Council (SSRC) commissioned her to be the law field reviewer for the Transitions to College Project sponsored by the Lumina Foundation. The law field review covers 20 years of scholarship and case law in the areas of college preparation, access, and retention, and will be a chapter in a forthcoming book. The Civil Rights Project at Harvard University also recently commissioned Miksch to write a chapter for a forthcoming book on college access. Her chapter titled "Unequal Access to College Preparatory Classes: A Critical Civil Rights Issue" was recently published in

Faculty Works In Progress, cont.

MARCH

2 Professor Mariano-Florentino Cuéllar, Stanford Law School

Refugee Security and the Organizational Logic of Legal Mandates

9 Professor Regina Austin, University of Pennsylvania Law School

"Face Time": Katrina, Class, and the Role of the Visual in the New Legal Realism

23 Professor A. Michael Frommkin, University of Miami School of Law

Winners and Losers: The Internet Changes Everything—Or Nothing?

30 Professor David Stras, University of Minnesota Law School

Are Senior Judges Unconstitutional?

APRIL

8 Professor Neil Duxbury, Manchester University School of Law

Two Precedent Problems (and Minnesota's Contribution to One of Them)

the Thurgood Marshal Scholarship Fund 2005 book *Brown v. Board of Education: Its Impact on Public Education 1954–2004*.

ROBIN STRYKER

Affiliated Professor Stryker (Professor of Sociology, Scholar of the College 2004–07) had a busy year. In 2005, she received a two-year National Science Foundation grant for her research project titled “Social Science in Government Regulation of Equal Employment Opportunity” (#SES-0514700). She has been engaged in archival work and a series of in-depth interviews with lawyers, social scientists, politicians, and policy makers active in employment discrimination law and policy making (1965–present). In addition, starting in 2005, she has participated in a project funded by the American Bar Foundation, Ford Foundation, and Center for Advanced Studies in the Behavioral Sciences, which brings together legal scholars and an interdisciplinary group of social scientists to conduct and disseminate results of interrelated research projects on employment discrimination and employment discrimination law. In August 2005, Professor Stryker won the Distinguished Article Award

from the Sociology of Law Section of the American Sociological Association for her 2004 article “The Strength of a Weak Agency: Title VII of the Civil Rights Act and the Transformation of State Capacity at the Equal Employment Opportunity Commission, 1965–1971,” *American Journal of Sociology*, with Nicholas Pedriana. Her law-related publications in the last year include “Law and the Economy,” with Lauren Edelman, in *Handbook of Economic Sociology* (Princeton University Press, 2005); “The Welfare State, Family Policies and Women’s Labor Market Participation,” in *Method and Substance in Comparative Political Economy*, with Scott Eliason and Eric Tranby (Russell Sage, forthcoming); a chapter on the “Sociology of Law” in the *Handbook of 21st Century Sociology* (Sage Publications, forthcoming); “Sociological Analysis of Labor Law,” in *Encyclopedia of Law and Society: American and Global Perspectives* (Sage Publications, forthcoming); and “Law and Economy,” in *Encyclopedia of Sociology* (Blackwell, forthcoming). She is preparing an invited article titled “Half Empty, Half Full or Neither? Law, Inequality and Social Change,” for the *Annual Review of Law & Social Science*. In the last year, Professor Stryker also

published two law-related book reviews: *Race Politics in Britain and France: Ideas and Policymaking Since the 1960s*, by Erik Bleich, in the *American Journal of Sociology* (November 2005); and *Rethinking Equality and the Value of Difference*, by Davina Cooper, in *Social Forces* (forthcoming). Professor Stryker was an invited faculty instructor at the Law & Society Association’s Graduate Student Workshop in Las Vegas, May 31–June 1, 2005, and she gave multiple invited talks around the country about her research on social science in employment discrimination law. She also was an invited panelist at the Third Annual Work Life Law Conference on Working Time, co-organized by Joan Williams, Center for Work Life Law, University of California Hastings, with the University of San Francisco School of Law, Equal Rights Advocates and the Legal Aid Society–Employment Law Center March 10, 2006. Professor Stryker’s pane was “New Institutionalism: How do Legal Changes and Concepts Turn into Organizational Practice? Lessons for Practitioners.”●

Faculty In Print

Publications by the full-time, visiting,
library, and affiliated faculty

Jan. 1, 2005 through Jan. 30, 2006

BEVERLY BALOS

Articles & Book Chapters

Lawyers Matter: Vindicating the Right to be Free From Domestic Violence, TEMPLE POL. & CIVIL RTS. L.REV. (forthcoming).

STEPHEN F. BEFORT

Books

EMPLOYMENT LAW AND PRACTICE 2nd ed. (Supp. 2005).

Articles & Book Chapters

When Quitting is Fitting: The Need for a Reformulated Sexual Harassment/Constructive Discharge Standard in the Wake of Pennsylvania State Police v. Suders, OHIO ST. L. J. (forthcoming 2006) (with Sarah J. Gorajski).

The Story of Sutton v. United Airlines, Inc.: Narrowing the Reach of the Americans with Disabilities Act, in EMPLOYMENT DISCRIMINATION STORIES 329 (2006).

A Reprise of a Classic: Gorman & Finkin's Basic Text on Labor Law: Unionization and Collective Bargaining, 7 U. PA. J. LAB. & EMP. L. 1031 (2005).

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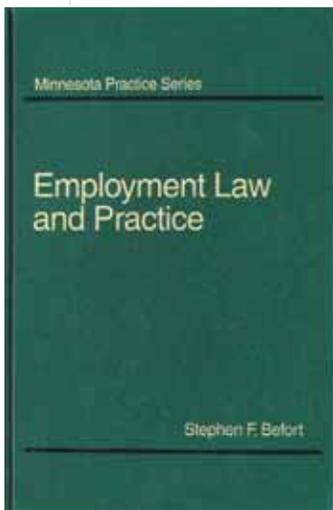
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BY STEPHEN F. BEFORT

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This is a comprehensive one-volume hardbound source of information covering a full range of legal issues that arise daily in the workplace. The book is tailored to Minnesota employment practice and comprehensively addresses judicial and legislative developments on both a federal and state level. It also contains an extensive index which makes topics easily accessible to attorneys and nonattorneys alike. This is particularly important, given the ever-increasing laws which regulate the employment relationship. Employers and employees need to be aware of their respective rights and obligations under these laws.



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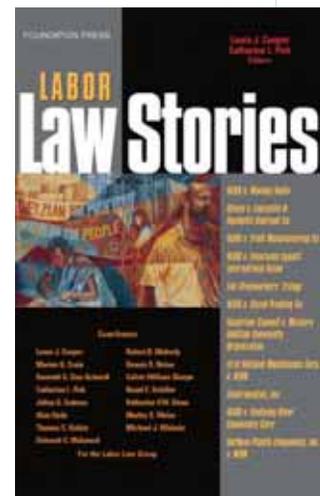
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EDITED BY LAURA J. COOPER & CATHERINE L. FISK

Labor Law Group Trust

In 1935, at the depths of the Great Depression, when prospects for American workers and businesses seemed bleak, Congress sought to improve both the lives of workers and the economy by enacting the National Labor Relations Act (NLRA). The text of the NLRA was brief. Congress created an administrative agency, the National Labor Relations Board, and entrusted it further to define the meaning of the statute and to implement its provisions. The chapters in *Labor Law Stories* tell the story of the development of labor law over the course of nearly 70 years, beginning with one of the earliest of the Supreme Court's cases under the NLRA and ending with one of its most recent. The 10 chapters present the story of 14 decisions of the Supreme Court and one from the National Labor Relations Board that never made it to the Supreme Court. The cases were identified as the most important labor law decisions from a survey of professors who regularly discuss these cases in their labor law courses. The stories behind the cases show the great variety of ways in which landmark cases become landmarks. This book was written by members of the Labor Law Group, a nonprofit organization composed of approximately 50 professors in the United States, Canada, Europe, and Israel, who today have six books on labor and employment law in print. This book, like the statute that gave rise to its subject, is inspired by the belief that people working together can achieve objectives that those working alone cannot.

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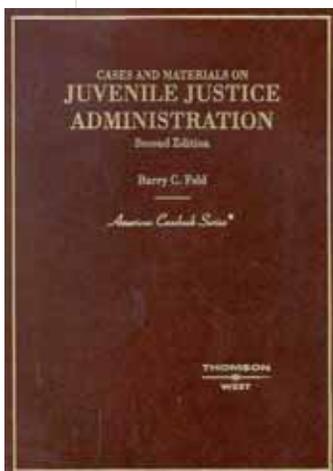
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Cases and Materials on Juvenile Justice Administration explores recent "get tough" policies that have compromised the traditional model of a discretionary and therapeutic justice system for children. The casebook examines the "law in action" as well as the "law on the books," and incorporates empirical evaluations, criminological studies, and developmental psychological research to enrich students' understanding and to explore controversial issues such as gender and racial disparities in juvenile justice administration. Professor Feld approaches this topic from a dual comparative perspective. He compares and contrasts the juvenile justice system with the criminal justice system used for adults, and also compares and contrasts the different states' laws and juvenile justice policies. The casebook focuses on three themes: (1) the legal and administrative consequences of regulating children rather than adults; (2) the procedural and substantive implications of a justice system that nominally emphasizes treatment rather than punishment; and (3) the tensions between discretion and rules that occur in a system which treats children rather than punishes adults.



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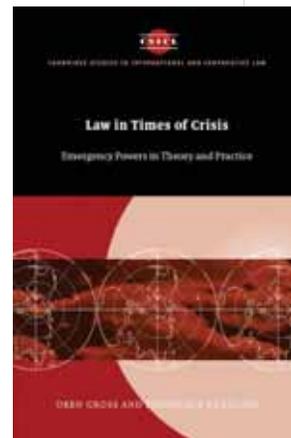
Law in Times of Crisis

Emergency Powers in Theory and Practice

BY OREN GROSS AND FIONNUALA NÍ AOLÁIN

Cambridge University Press

The terrorist attacks of Sept. 11, 2001, and the ensuing "war on terror" have focused attention on issues that have previously lurked in a dark corner at the edge of the legal universe. This book presents the first systematic and comprehensive attempt by legal scholars to conceptualize the theory of emergency powers. It considers post-September 11 developments from theoretical, historical, and comparative perspectives. The authors examine the interface between law and violent crises through history and across jurisdictions, bringing together insights gleaned from the Roman republic and Jewish law through to the initial responses to the July 2005 attacks in London. Three unique models of emergency powers are used to offer a novel conceptualization of emergency regimes, giving a coherent insight into law's interface with and regulation of crisis, and a distinctive means for states to evaluate the legal options open to them for dealing with crises.



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Crime and Justice, Vol. 33

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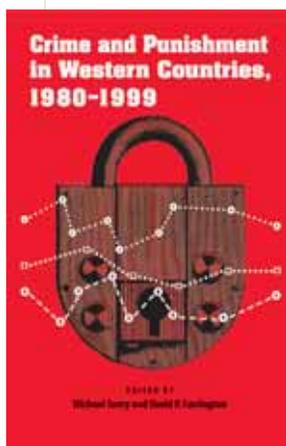
EDITED BY MICHAEL TONRY AND DAVID P. FARRINGTON

University of Chicago Press Journals

Volume 33 of Crime and Justice presents comprehensive, up-to-date summaries of crossnational crime trends in Australia, Canada, England, Wales, the Netherlands, Scotland, Switzerland, and the United States. These essays take an interdisciplinary approach to crime, its causes, and its repercussions.

Contributors: Marcelo F. Aebi, Catrien C. J. H. Bijleveld, Alfred Blumstein, Carlos Carcach, Philip J. Cook, Mark H. Irving, Darrick Jolliffe, Nataliya Khmylevska, Martin Killias, Philippe Lamon, Patrick A. Langan, Asheley Van Ness, Paul R. Smit, David J. Smith, and Brandon C. Welsh.

Michael Tonry is the Sonosky Professor of Law and Public Policy and director of the Institute on Crime and Public Policy at the University of Minnesota, and senior fellow in the Netherlands Institute for the Study of Crime and Law Enforcement, Leiden. David P. Farrington is professor of psychological criminology at Cambridge University.



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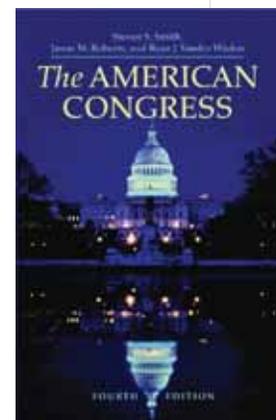
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The American Congress

BY JASON M. ROBERTS

Cambridge University Press

Informed by the authors' Capitol Hill experience and nationally recognized scholarship, *The American Congress* presents a crisp introduction to all major features of Congress: its party and committee systems, leadership, and voting and floor activity. Including the most in-depth discussions of the place of the president, the courts, and interest groups in congressional policy-making available in a text, this text blends an emphasis on recent developments in congressional politics with a clear discussion of the rules of the game, the history of key features of Congress, and stories from recent Congresses that bring politics to life.



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› Faculty Profile

Brett McDonnell

Associate Professor of Law

Brett McDonnell joined the Law School faculty as an associate professor. He was the 2005 Julius E. Davis Professor of Law. He teaches and writes in the areas of business associations, corporate finance, law and economics, securities regulations, mergers and acquisitions, contracts, and legislation.

Business law Associate Professor Brett McDonnell is taking his scholarship in a new direction, looking at how corporate law could evolve to increase employee involvement in corporate decision-making.

“Most American scholars who think about corporate governance focus on boards of directors, shareholders, and top managers, and they don’t look much at anyone else,” he says. “I think that is wrong. An important part of corporate governance is how it interacts with employees of the company.”

McDonnell is best known for his writing on corporate federalism, the interplay of state and federal efforts to regulate business. Now he is returning to topics that intrigued him as an economics doctoral student at Stanford University.

His PhD thesis examined the relationship between worker cooperatives and banks, he says. One argument for why more co-ops haven’t flourished is because banks are unfamiliar with their business model, making it difficult for co-ops to secure capital. Like the financial system, the legal system is more familiar with the traditional shareholder-owned business model. McDonnell wants to develop a theoretical legal framework that encourages more employee involvement in corporate governance. His aim is to explain why employee involvement is beneficial, and he plans to investigate which changes to the law would encourage such employee input.

McDonnell grew up in Beloit, Wisc., the son of a college professor father



and a high school teacher mother. “I knew I was going into academia from a pretty young age. It was all a matter of what field I would go into,” he says.

For a long time, that field was economics. He attended Williams College, Williamstown, Mass., and was inspired by his economics professors, including Michael McPherson (who went on to become president at Macalester College in St. Paul, Minn.) and by books such as Ken Arrow’s *The Limits of Organization* (W.W. Norton & Co., 1974).

He earned a masters in philosophy from Cambridge University before attending Stanford. It wasn’t until his last year of graduate school that he found economics’ formal mathematical modeling too confining. McDonnell then shifted gears.

“I realized that there was this thing called law and economics where I could use a lot of my econ training,” he explains. “I could do broader research and writing.”

After graduating from the Boalt Hall School of Law at the University of California-Berkeley in 1997, McDonnell clerked for Ninth Circuit Court of Appeals Judge Alex Kozinski, whom *Legal Affairs* has called, “the most controversial judge in our most controversial court.” McDonnell called him a brilliant, fascinating, and loyal boss—and one who “nearly works his clerks to death,” which McDonnell found to be good preparation for private practice.

During the late 1990s tech boom, McDonnell worked for a San Francisco-based law firm doing public offerings, acquisitions, and general corporate counseling. He translated that experience to the classroom after joining the Minnesota Law faculty in 2000.

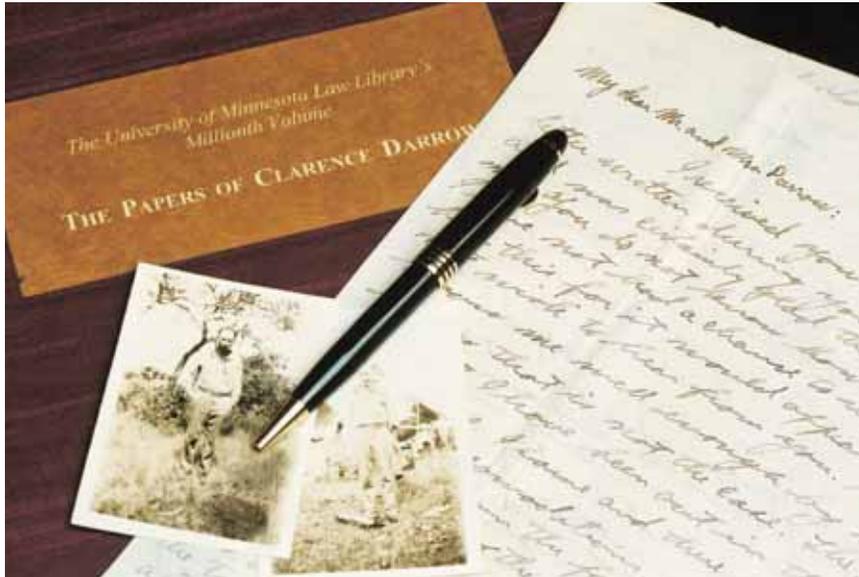
While preparing a lecture on prospectuses for his securities and regulation course, he recalled having worked on an initial public offering for an Internet-based credit card company. Curious about how it had fared, he checked the stock price history and found it dropped 75 percent in one day—after being investigated for fraud. (This happened after he left the firm, which had nothing to do with the problem.)

The company became embroiled in a class action suit, fertile ground for a case study. McDonnell instructed students to go through the prospectus as both corporate and shareholders’ attorneys and to argue both sides of the suit.

Although McDonnell has strong California ties, he has chosen to stay in Minnesota. “It is coming back home,” he said. “My father still lives in Beloit. My partner and I love the Twin Cities. We like the faculty a lot. That’s what keeps us here.” ●

By Scott Russell. Russell is a freelance writer and full-time reporter, covering Minneapolis city government for *Skyway News* and *Southwest Journal*.

➤ First Person



Work Continues on Darrow Papers

The Law Library celebrated the acquisition of its millionth volume, *The Papers of Clarence Darrow*, in October 2005. The centerpiece of this collection are hundreds of Darrow's personal letters as well as letters written by other family members.

BY PROFESSOR MICHAEL HANNON, '98

To establish the Law Library as the preeminent resource on the work and life of Clarence Darrow, one of the most important lawyers in American legal history, we are working on several long-term goals. First, we are acquiring as much substantive written material as possible about Darrow, including material that he wrote as well as material that was written about him such as books, articles, news accounts, pamphlets, and also photographs. In addition to this comprehensive collection of Darrow-related materials, we intend to acquire trial transcripts of important Darrow cases. Connie Lenz, associate director

for Collection Development, is working on locating and acquiring Darrow material for our general collection, while Katherine Hedin, curator of Rare Books & Special Collections, is pursuing Darrow material for the Rare Books collection.

Digitization, the process of scanning and capturing paper or photographic materials in digital form, gives us a wonderful opportunity to provide universal access and permanent preservation of the Law Library's Darrow collection. Our current plan is to scan and capture a significant portion of new Darrow acquisitions, which will then be added to a publicly accessible Web site. The Darrow letters and other digi-

tized material will be woven into various parts of the Web site where relevant to the subject area or chronologically appropriate.

Already we have digitized 337 letters (totaling 489 pages) written by Darrow to family members and friends; we also scanned 35 envelopes, which help illustrate the historic aspects of the letters. These digital images of the Darrow letters are vitally important, as they allow us to provide universal access to this one-of-a-kind collection while at the same time preserving and protecting the actual letters from damage. The letters were scanned by the University's Digital Collection Unit (DCU) located in the Elmer L. Andersen Library. The DCU will continue to provide guidance and support as our digitization project progresses.

In addition to digitizing the letters, we are transcribing each of the Darrow letters and will provide online and print access to the transcriptions. Bonnie Johnson, executive secretary/special events coordinator for the Law Library, is undertaking this essential project. While her task is slow and sometimes tedious, legible transcriptions will greatly increase the value of the collection; Darrow's handwriting skills fell far short of his trial skills, and without transcriptions everyone from dedicated scholars to curious amateurs would be hampered in their efforts to learn more about this great American lawyer.

To guide us in the process of creating the Library's digital Darrow collection, we fortunately have several excellent models, including the Lincoln Papers at the Library of Congress and letters of John Muir by the Wisconsin Historical Society, both of which feature digitized letters and transcriptions. As we continue our work on the Law Library's Darrow collection, we are grateful for the generosity and hard work that has made this outstanding acquisition possible. ●



FEATURES This issue of the alumni magazine is devoted to constitutional law and to the careful consideration and debate given to it by outstanding faculty at the Law School. In this time of war and increasingly expansive executive branch powers, constitutional law is a hotbed of controversy. The Features section contains articles about the work of Professors Michael Stokes Paulsen, Dale Carpenter, and Jim Chen. Professor Heidi Kitrosser examines executive privilege, and in the final feature, she is joined by Professors Paulsen and Carpenter in a thought-provoking discussion, facilitated by e-mail, about wartime presidential powers.

Building A More Perfect Law School

The Law School's constitutional law faculty offers lively and diverse insights on sometimes controversial constitutional topics.

BY SCOTT RUSSELL

Scholarship is the cornerstone of any excellent constitutional law program; it inspires classroom teaching, attracts top guest lecturers, creates student opportunities in research and writing, and eventually, leads students to top jobs and clerkships. By any scholarly standard, the Law School's constitutional law program has a solid foundation.

Associate Dean Michael Stokes Paulsen is writing *The Constitution of War*, a book examining the constitutional issues of war, peace, national security, terrorism, and individual liberties. The project grew out of a course he began teaching shortly after 9/11. He also is coauthoring a new constitutional law casebook, built on a "Great Cases" theme.

Professor Dale Carpenter is writing a book on the untold history of *Lawrence v. Texas*, the 2003 U.S. Supreme Court decision that struck down the Texas sodomy law and established a constitutional privacy right for consensual sex between adults. A native Texan, Carpenter travels there for first-person research with the case's key players.

Associate Dean Jim Chen has focused his recent scholarship on the Supreme Court's desegregation cases. This past year he coordinated a Law School symposium, "With All Deliberate Speed: *Brown II* and Desegregation's Children." Chen's research traces the odd literary origins and serious legal consequences of the Court's oxymoronic phrase "all deliberate speed" that allowed southern school districts to delay desegregation.

Dean Alex M. Johnson, Jr., is proud of the depth and breadth of faculty scholarship, yet even more so of its civility and collegiality despite differences. Constitutional law is filled with controversial issues from abortion to gay marriage, issues that can create acrimony and ill will, he explains. The faculty's ideological diversity is its greatest strength.

"Faculty members don't always agree," Johnson says. "They are able to address counterarguments in advance of publication. As a result, I think their work has much more depth, is much stronger, and is more robust."

The Law School's constitutional scholars do not shy from controversy. Paulsen argued in the *Yale Law Journal* that the court should decide future abortion cases based on the Constitution alone, not on *stare decisis*. "Congress could pass a law relieving the court of its perceived obligation to follow precedent," he writes. Carpenter has testified before the U.S. Senate Judiciary Committee, arguing against a constitutional amendment banning gay marriage. The amendment would undermine federalism, cutting short an important national debate, Chen says. He is watching as state politicians prepare to debate tougher policies on illegal

immigrants. Such policies raise important constitutional issues, and he hopes that politicians will respect these immigrants' rights.

The legal academy is often accused of bias, Johnson says: "but, you can see from our faculty we have a wide spectrum of ideas."

It's about the students

Second-year law student Kari Bomash probably won't pursue a career as a constitutional law scholar, but her experience speaks to the importance of a strong and inspiring constitutional curriculum. Bomash is in the joint degree program and is pursuing both a law degree and a masters degree in public health.

Outside the classroom, law students have ample opportunity to engage in constitutional discussions with the nation's top scholars.

Bomash got hooked on Carpenter's constitutional law class, her favorite first-year course. She now is taking a public health law class, focusing on the constitutional issues raised by such policies as quarantine and government collection of individuals' health data. "If you are going to work in public health, even if you don't use it directly, you need to be cognizant of how much power you have," she says.

Outside the classroom, law students have ample opportunity to engage in constitutional discussions with the nation's top scholars. Chen coordinated the first inaugural Constitution Day lecture series this past fall, showcasing the University's talent, including lectures by Professor Kevin Reitz on criminal procedure and by Associate Professor Jill Hasday on equal protection.

"We filled the biggest room in the law school, in excess of 200 people," Chen says. "We had overflow video rooms and arranged for video linkage throughout the campus and university system."

Third-year students Jenny Gassman-Pines and Karla Vehrs are engaged in Supreme Court scholarship. Gassman-Pines, editor-in-chief of the *Journal of Law and Inequality*, and her staff of 45 are publishing many of the lectures from this past spring's *Brown II* symposium, which featured NAACP chairman Julian Bond and top scholars from Duke, the University of Chicago, and other law schools. Vehrs is the *Minnesota Law Review* articles editor for the Lindquist & Vennum 2005 Symposium, "The Future of the Supreme Court: Institutional Reform and Beyond." The fall event drew 13 national scholars, including Kenneth Starr, dean of the Pepperdine Law School and former special prosecutor.

All the journal members had an opportunity to attend the *Brown II* symposium and listen to the speakers before starting work on articles for publication. "It was nice to hear them speak, talk through their ideas, and see how that translated into an actual written academic work," says Gassman-Pines, who will clerk for Minnesota Supreme Court Chief Justice Russell Anderson, '68, after graduating.

The "Future of the Supreme Court" symposium was particularly timely, coinciding with two Supreme Court vacancies, explains Vehrs, who plans to do civil litigation at Lindquist & Vennum after graduating. The Law School has prepared her well, she says. "The thing about constitutional issues, they can come up in any matter that you are working on."

In another boon to students, the Law School is reviving the school's Jurist in Residence program. It hopes to host a U.S. Supreme Court Justice on campus next spring.

"The program will allow students to interact with judges on a more intimate level," says Johnson, who credits Associate Professor David Stras with spearheading the effort. "We hope the participating judge will be in the building, attend classes and seminars, and have one-on-ones with students over a period of a week to ten days."

The Jurist in Residence program also would help Supreme Court and federal justices recognize the high caliber of Minnesota Law School students and steer them to top clerkships. Stras, who sits on the Law School's clerkship committee, clerked for Justice Clarence Thomas in 2002–2003, and had a behind-the-scenes role in the term that included important cases addressing affirmative action, three-strikes laws, and Megan's law.

The University also delighted in hosting recently retired Supreme Court Justice Sandra Day O'Connor on May 23 as part of the University of Minnesota Alumni Association's annual celebration.

Scholarship in action

The constitutional scholarship done at the Law School covers a broad landscape.

In Chen's writings on desegregation and *Brown II*, he traces the U.S. Supreme Court's first use of the phrase "all deliberate speed" to *Virginia v. West Virginia* (1911). Justice Oliver Wendell Holmes erroneously attributed it to English Chancery, where it does not appear, according to Chen. The phrase's most likely source is the 1893 poem *The Hound of Heaven* by Francis Thompson, a laudanum addict who sought refuge in religion and poetry.

"One aspires to inform and inspire one's peers and one's students," Chen says. "Showing some of the artistic, literary, and historic aspects of the law—putting legal decisions in their broader cultural context—is very important to me, to



Build Your Constitutional IQ

Before the Bill of Rights added a slew of rights to the U.S. Constitution, the original document used the term “right” but once. Can you give the citation?

Tick, tick, tick, tick...ding.

Time’s up.

The answer is patently simple:

See Art. I, § 8, cl. 8: “The Congress shall have Power... To promote the Progress of Science and useful Arts, by securing for limited Times to Authors and Inventors the exclusive Right to their respective Writings and Discoveries...”

This is one question in a 21-item constitutional scavenger hunt created by Associate Dean Jim Chen as part of the inaugural Constitution Day event, held in Fall 2005. The hunt is available online at www.law.umn.edu/constitutional-law/index.html.

understand these landmarks for what they are. They are not perfect. They are doctrinally flawed.”

Chen’s sweeping scholarship also includes First Amendment issues such as *Conduit-Based Regulation of Speech*, where he argues against applying different free speech standards to different media. In coming years, he plans to write more on the “economic Constitution,” building on work he has done on such cases as *Wickard v.*

Filburn (his favorite), a significant New Deal case that greatly expanded the federal government’s role in regulating harvested commerce, right down to the amount of grain grown for on-farm consumption.

Paulsen has challenged conventional wisdom in numerous areas. In *The Irrepressible Myth of Marbury*, he confronts the long-held interpretation that *Marbury v. Madison* (1803) made the Supreme Court the final interpreter of the Constitution, often called “judicial supremacy.”

He writes, “Marbury stands instead for constitutional supremacy...and the personal responsibility for all who swear an oath to support the Constitution to be guided by their best understanding of the Constitution and not pliantly to accede to violations of the Constitution by other government actors.”

In *The Constitution of Necessity*, Paulsen says the presidential oath of office—to “preserve, protect and defend the Constitution of the United States”—creates a self-preservation principle that in some cases overrides specific constitutional restraints. It’s a key issue given the current debate over presidential powers. The president’s first duty, writes Paulsen, “is to preserve, protect and defend the Constitution of the United States by preserving, protecting and defending the *United States* by every indispensable means within his power.” (For more on this issue, see the faculty debate on page 35.)

Other professors are expanding constitutional scholarship at the Law School, including Associate Professor Guy-Uriel E. Charles on voting rights and Associate Professor Heidi Kitrosser on free speech and separation of powers.

And Law School colleagues help shape each other’s work as well. Carpenter, a self-described conservative, was considering an idea for a new article: How could a conservative reconcile a basic distrust of substantive due process with the fact that it is a basic constitutional doctrine, a part of the Supreme Court’s jurisprudence for more than a century?

He never wrote it. After taking his ideas to a faculty “half-baked ideas” seminar and getting feedback, he scuttled it as

Alumnus and Jurist Michael A. Wolff on Prevailing Side in Two Supreme Court Speakers

CHIEF JUSTICE MICHAEL A. WOLFF, '70, played a significant role in two recent U.S. Supreme Court cases: one rejecting the death penalty for juveniles who commit murder, the other ending a police interrogation tactic he called an “end run” around the *Miranda* warning.

Justice Wolff sits on the Missouri Supreme Court, which heard both cases. He voted on the prevailing side of both 4-3 votes. On appeal, the U.S. Supreme Court upheld the Missouri court's decisions on similarly thin margins.

Ask Justice Wolff what it's like to have the high court parse one's prose, and he responds philosophically. “It is a matter of some interest, obviously, but it is not nerve wracking,” he says. “Most judges — except for those on the U.S. Supreme Court—always stand the prospect of being reversed. It doesn't change much about how you feel about it.”

In *Simmons v. Roper*, the Missouri Supreme Court reversed Christopher Simmons' death penalty conviction. At age 17, Simmons murdered Shirley Crook. Following a botched robbery, he bound and gagged her and pushed her into a river, the opinion said.

Simmons' attorneys appealed on Eighth Amendment grounds, calling it cruel and unusual punishment to execute someone for a crime committed as a minor. In *Stanford v. Kentucky* (1989) the U.S. Supreme Court refused to bar executions of 16 and 17 year olds, saying a “national consensus” did not exist. However, Justice Wolff said the Missouri Supreme Court's majority thought the U.S. Supreme Court's decision in *Atkins v. Virginia* (2002) weakened the

Stanford precedent. Atkins said executing mentally retarded criminals violated the Eighth Amendment.



The U.S. Supreme Court confirmed the Missouri court's decision 5-4 March 1, 2005. “When a juvenile offender commits a heinous crime, the State can exact forfeiture of some of the most basic liberties, but the State cannot extinguish his life and his potential to attain a mature understanding of his own humanity,” wrote Associate Justice Anthony Kennedy.

In *Missouri v. Seibert*, a jury convicted Patrice Seibert of second-degree murder based on her taped statement. According to court summaries, Seibert's severely disabled 12-year-old son died in his sleep. She feared neglect charges because he had bedsores. Her older son burned their mobile home to conceal the death, also killing an unrelated youth who lived with them.

The question, Justice Wolff said, was whether Seibert knew about the arson or directed it.

A Rolla, Mo., police investigator called the St. Louis police and asked them to take Seibert into

custody—with specific directions to withhold the *Miranda* warning. The Rolla investigator interviewed her informally, took a short break, then gave her the *Miranda* warning and took a taped statement using information gleaned from the first interview.

The litigants referred to it as “the Missouri two-step,” Justice Wolff says. He wrote the Missouri Court's opinion and said, for him, it was “clear cut.”

“The interrogation was set up to violate *Miranda* to secure a confession,” the opinion read. “The prosecution has not overcome the presumption that this tactic produced an involuntary confession.”

The case merited U.S. Supreme Court review, Justice Wolff says. The investigator testified the two-step tactic was part of his police training. Other police departments used it. The U.S. Supreme Court upheld the Missouri decision on a 4-1-4 plurality June 28, 2004.

Justice Wolff became the Missouri Supreme Court's Chief Justice on July 1, 2005. The position rotates among justices for two-year terms.

Justice Wolff says the University of Minnesota Law School gave him a good, comprehensive legal education. In particular, he recalled Professor Bob Levy's family law course. “Levy and two psychiatrists had a wonderful seminar on divorce counseling that explored some of the human aspects of decision making,” he says.

Minnesota Appeals Court Judge Harriet Lansing, a classmate and friend, says “Justice Wolff had a creative intelligence grounded in concrete scholarship. We all greatly benefit though any involvement he has in the development of law.”

a hopeless cause. “The seminars can be very valuable, both in shaping an article and in discouraging people from wasting time on an article that is going to be very hard to write,” he says. The faculty also has more formal “Faculty Works in Progress” seminars to offer internal critiques.

Faculty members also work together to publish *Constitutional Commentary*, one more example of the collaborative environment that Johnson and predecessor deans such as Robert Stein and E. Thomas Sullivan have worked to create.

Paulsen and Chen coedit *Constitutional Commentary* with Carpenter, Charles, Professor Brian Bix, and others. Paulsen says it aspires to be “an interesting, occasionally irreverent

yet serious scholarly journal of constitutional law.” Chen calls *Constitutional Commentary* “our playground.” One of the nation's few faculty-edited law journals, it attracts works by a number of top scholars.

The Law School continues to build on its rich tradition of constitutional scholarship, from former deans Carl Auerbach and William Lockhart to former professors Philip Frickey, Suzanna Sherry, and Daniel Farber.

“We have the scholars,” Johnson says. “We may want to add one or two more in the future, but our key issue is retaining the core that we have.” ●

Scott Russell is a freelance writer and full-time reporter, covering Minneapolis city government for *Skyway News* and *Southwest Journal*.



Revisiting Executive Privilege

The topic of executive privilege has been in the news quite a bit of late. Invoking the doctrine, members of the Bush administration have refused to turn over documents or to testify on matters including Hurricane Katrina,¹ recent Supreme Court nominees², and 9/11.³ A claim of executive privilege generally is a claim by the president of a constitutional right to withhold information from Congress, the courts, or persons or agencies empowered by Congress to seek information.⁴ Executive privilege is not mentioned in the text of the Constitution, nor is it statutorily authorized. Rather, executive privilege claims are based on the notion that some information requests effectively infringe on the president's Article II powers by threatening his ability to receive candid advice or to protect national security.⁵

This essay and the article on which it is based⁶ assess the constitutional validity of executive privilege doctrine. The executive privilege conflicts focused on are solely those between Congress and the president or other high-ranking executive branch officers. This essay defines such conflicts broadly to include clashes over information sought by Congress or by a committee or subcommittee thereof pursuant to statutory authorization, clashes over information sought by individuals through congressionally drawn public access statutes, and clashes over information sought by congressionally created agencies with statutory investigative powers. This essay concludes that executive privilege claims made in such contexts are constitutionally illegitimate and that courts, when turned to, should order compliance with statutorily authorized demands for information in the face of such claims.

BY HEIDI KITROSSER, Associate Professor of Law

This essay is based on an article draft entitled *Secrecy and Separated Powers: Executive Privilege Revisited*. The draft is available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=874874. The final version of the article will be published in Volume 92 of the *Iowa Law Review*.

Part I of this essay summarizes major judicial and scholarly approaches to executive privilege. These approaches examine the respective legislative and executive powers listed in Articles I and II of the Constitution. Were a tool other than information control at stake, the judiciary and many scholars would have matters well in hand in deeming information control a shared legislative/executive power and in combining judicial restraint with occasional interest balancing to resolve intractable conflicts. As Part II explains, however, existing judicial and scholarly approaches uniformly err in failing to consider whether there is something constitutionally unique about information control that dictates treatment different from that which other tools of power might receive. Part II further explains that information control does have special constitutional significance. Specifically, analysis of constitutional text, structure, and history suggests that secrecy within the political branches must, to be legitimate, remain a politically controllable tool

The best means to reconcile the constitution's respective approaches to openness and secrecy is to treat secrecy as a tool that government may use to effectuate its purposes, but which must be kept within the sight of its ultimate owners, the people.

of the people. To keep such secrecy within the ultimate control of the people, mechanisms must exist to keep the secrecy “shallow” and politically checkable. In other words, mechanisms must exist to ensure that the very fact of such secrecy is subject to public debate, reconsideration, and reprisal. This is particularly crucial with respect to executive branch activities, given that branch's special capacity for secrecy. Part III explains that the natural mechanisms to keep government secrecy shallow and politically checkable are statutory authorizations to Congress, to the public, and to agencies to demand information. Such authorizations, rather than judicial or executive second-guessing, should be conclusive as to the relative merits of secrecy and openness in cases where executive privilege is claimed.

I. Existing Judicial and Scholarly Approaches

Existing judicial approaches to executive privilege, and most existing scholarly approaches to the same, accept the existence of a “qualified” executive privilege.⁷ That is, they effectively deem control of executive branch information, a power shared by the executive and legislative branches. As a result, courts, with the blessing of many scholars, encourage political resolution of executive privilege conflicts, but are willing to employ a balancing test to resolve the matter should political resolution seem unlikely.⁸ The standard balancing test, borrowed from the well-known case of *U.S. v.*

Nixon, weighs the interests in secrecy against the interests in disclosure but places a presumption on the side of secrecy.⁹ Furthermore, the pro-secrecy presumption, as stated in *Nixon* and as echoed implicitly by lower courts, is much stronger where the president invokes national security.¹⁰

This approach is not unattractive if one focuses solely on the respective legislative and executive powers listed in Articles I and II of the Constitution. Indeed, one could credibly argue both that information control is a facet of Congress' power to pass legislation “carrying into Execution” presidential power,¹¹ and that once the executive has been given tasks by the legislature to effectuate, information control falls within the president's power to effectuate such tasks (e.g., to execute the law).¹² Proponents of executive privilege also rely on history. Perhaps their most significant historical argument is that members of the founding generation referred approvingly to presidential “secrecy.”¹³

II. The Special Constitutional Significance of Information Control

The core problem with the arguments cited above is that they fail to account for the special constitutional significance of information control as a textual, structural, and historical matter. In other words, even if we assume that there is some realm of implied presidential power that overlaps with Congressional power and that interbranch tugs of war as to such power often are best addressed through a combination of judicial restraint and balancing tests, information control is different from other tools of power in a way that directs a unique conclusion about it. In fact, information control has very special constitutional significance. Reliance on openness as an operative norm can be detected throughout the Constitution. Specifically, constitutional text and structure suggest a faith in openness between the political branches and between such branches and the people. At the same time, constitutional structure, text, and history also suggest an understanding that government secrecy sometimes is a necessary evil. Ultimately, text, structure, and history suggest that the means of reconciling these points is to ensure that any government secrecy remain a politically controllable tool of the people and their representatives. Specifically, text, structure, and history suggest that, to keep government secrecy within the ultimate control of the people and hence nontyrannical, the very fact of such secrecy must remain shallow, or as close to the public eye as possible. Furthermore, for secrecy's shallowness to be meaningful, any secrecy, the fact of which is known, should be subject to political checking, whether through reprisals or through public exposure of secrets.

The article on which this essay is based details the textual, structural, and historical support for these conclusions. This essay summarizes that support very briefly. First, reliance on information flow as the presumptive lifeblood of our constitutional system can be detected in three major ways: (1) from the very fact of popular sovereignty, which would be illusory absent substantial information about government; (2) from the First Amendment, the existence of which helps

to confirm the structural inference just mentioned and the doctrine of which suggests the particular importance of free information flow about government; (3) from the legislative, treaty-making, and nomination processes outlined in Articles I and II, which are structured around public and intrabranch dialogue and which suggest the importance of intrabranch and public information flow with respect to regulatory and other major decisionmaking.¹⁴

Second, recognition that government secrecy sometimes is a necessary evil is reflected in two major ways: (1) through Article I, section 5, clause 3. This provision requires each house of Congress to “keep a Journal of its Proceedings, and from time to time publish the same” but allows each house to “except such Parts as may in their Judgment require Secrecy;” (2) through founding era statements that suggest that an advantage of having one person as president (as opposed to a council of copresidents) is the relative ability of a single person to operate with “secrecy...dispatch...vigor and energy.”¹⁵

Third, as a logical matter, the best means to reconcile the constitution’s respective approaches to openness and secrecy is to treat secrecy as a tool that government may use to effectuate its purposes, but which must be kept within the sight of its ultimate owners, the people. The logical means of keeping the tool so in check are mechanisms designed to help ensure secrecy’s shallowness and political checkability. This conclusion is bolstered by the very factors often cited to support unfettered executive branch secrecy—the Article I, Section 5 provision mentioned above and the founding era references to presidential secrecy mentioned above. With respect to Article I, Section 5, its status as the only textual reference to secrecy suggests a choice to accord an explicit secret-keeping power only to the branch that will logically and politically find it most difficult to keep secrets and to couch this power as an exception to a general norm of openness.¹⁶ This suggests an understanding that when government secrecy occurs, it should be rare, difficult to engage in, and sufficiently exceptional as to be detectable and hence shallow. With respect to founding era references to presidential secrecy, these references occurred within the context of larger discussions extolling the virtues of a unitary president, including the relative transparency, upon investigation, of a single person’s doings. For example, Alexander Hamilton famously stated that “[d]ecision, activity, secrecy, and dispatch will generally characterize the proceedings of one man...”¹⁷ Yet Hamilton, in the same Federalist Paper in which he made this statement, followed the statement with an approving explanation of the responsibility and potential transparency of a unitary president. Hamilton argued that “multiplication of the executive adds to the difficulty of detection,” including the “opportunity of discovering [misconduct] with facility and clearness.” One person “will be more narrowly watched and most readily suspected.”¹⁸ This suggests a compromise between the advantages of presidential secrecy and the risk of tyranny that such secrecy poses: The president can use his unique capacity for secret-keeping but such use must remain on a relatively short political leash.

III. Statutory Access Requirements

If the theoretical reconciliation of constitutional openness and secrecy values is the notion of shallow and politically checkable secrecy, so the practical manifestation of that reconciliation is allowing the executive to operate in secret but subjecting such operation to any checks authorized through the legislative process. The statutory process itself thus would be conclusive of any Article II concerns, and any judicial enforcement provided by statute would be appropriate. As suggested earlier, three major types of checks can be authorized. First, Congress can pass statutes granting the public access rights to categories of executive branch information. Second, Congress can pass statutes giving itself and its committees and subcommittees subpoena power, subject to contempt penalties, to seek information from the executive branch. Third, Congress can create agencies similarly empowered to demand information from the executive branch.

The impact of White House secrecy on current events reminds us of the systemic significance of information control between the political branches and between those branches and the people.

The statutory process is the most intuitive means to subject presidential secrecy to a public process of political questioning and consideration. As suggested earlier, the legislative process is designed to ensure relative openness and deliberation between the political branches and between those branches and the people. The legislative process thus places the parameters of openness mandates and debate about them in the sunlight, even as the policies themselves permit some secrecy. While the legislative process constitutes a metalevel on which broad access policies are formulated, the policies so created then generate a second level of activity through which executive secrecy is overseen more directly. Thus, individuals can vindicate Congressional openness policies by seeking specific pieces of information through public access statutes, and Congressional committees and subcommittees and legislatively empowered agencies similarly can vindicate such policies through their investigations.

Conclusion

The time is ripe to revisit the constitutional validity of executive privilege. Reassessing executive privilege has significance both for the doctrine itself and for executive branch secrecy more generally—including the nearly complete discretion accorded the executive branch to classify information¹⁹—as the justifications for the two overlap substantially.²⁰ Furthermore, the impact of White House secrecy on current events reminds us of the systemic signif-

icance of information control between the political branches and between those branches and the people.

Additionally, understanding that executive secrecy is subject to legislative control helps to remind us that the dangers of information disclosure are mere policy arguments, not static constitutional truths, and that they should be debated and weighed in the realm of legislative policy-making along with the dangers of secrecy itself. Indeed, scores of recent commentators, ranging from the 9/11 Commission to students of the 2003 Iraq invasion, have observed the catastrophic consequences that secret, and hence unchecked, decisionmaking can have on policymaking and on national security in particular.²¹ This is not to suggest that it is always a mistake for the government to operate in secrecy. It is to suggest, however, that the very fact of secrecy must be subject to public debate and checking through the dynamic and dialogic legislative process outlined in Articles I and II of the Constitution and through the robust effectuation of any openness directives derived from that process. ●

FOOTNOTES

1. See, e.g., Eric Lipton, *White House Declines to Provide Storm Papers*, NY TIMES, Jan. 25, 2006, at www.nytimes.com/2006/01/25/politics/25katrina.html.
2. See, e.g., *President Refuses to Release Miers Documents*, CNN.COM, Oct. 24, 2005, at www.cnn.com/2005/POLITICS/10/24/miers.ap/index.html.
3. See, e.g., Chris Strohm, *9/11 Commission Sets Precedent for Executive Privilege Challenges*, www.govexec.com/dailyfed/0704/072904c1.htm, July 29, 2004; James G. Lakely, *Rice to Testify Publicly About 9/11*, THE WASHINGTON TIMES, March 31, 2004, www.washingtontimes.com/functions/print.php?StoryID=20040331-123308-9604r; Sharon Kehnemui, *Senators Push for Rice Testimony*, FOXNEWS.COM, March 30, 2004, www.foxnews.com/printer_friendly_story/0,3566,115569,00.html.
4. See, e.g., Mark J. Rozell, *Executive Privilege Revived: Secrecy and Conflict During the Bush Presidency*, 52 DUKE L.J. 403, 404 (2002). The term “presidential communications privilege” sometimes is used to distinguish the privilege discussed in this Article from other forms of immunity labeled “executive privilege,” such as immunity from civil suit while in office. See, e.g., *In re Sealed Case*, 121 F.3d 729, 735 n.2 (D.C. Cir. 1997). This essay uses the term “executive privilege” to refer solely to the communications aspect of the privilege.
5. See, e.g., *U.S. v. Nixon*, 418 U.S. 683, 706 (1974); MARK J. ROZELL, EXECUTIVE PRIVILEGE: PRESIDENTIAL POWER, SECRECY, AND ACCOUNTABILITY 43–48 (2002).
6. Heidi Kitrosser, *Secrecy and Separated Powers: Executive Privilege Revisited* (2006) working draft available at http://papers.ssrn.com/sol3/papers.cfm?abstract_id=874874. The final version of the article will be published in Volume 92 of the *Iowa Law Review*.
7. But see Kitrosser, *supra* note 6 at Part II(B) for discussion of other scholarly approaches.
8. See, e.g., *Nixon v. Administrator of General Services*, 433 U.S. 425, 443, 446–50 (1977); *Association of American Physicians and Surgeons v. Clinton*, 997 F.2d 878, 909 (D.C. Cir. 1993); *Senate Select Committee on Presidential Campaign Activities v. Nixon*, 498 F.2d 725, 729, 731–33 (D.C. Cir. 1974); *United States v. United States House of Representatives*, 556 F.Supp. 150, 151–53 (D. D.C. 1983). For scholarly support of a qualified executive privilege see generally, e.g., ROZELL, *supra* note 5; see also, e.g., J. Richard Broughton, *Paying Ambition's Debt: Can the Separation of Powers Tame the Impetuous Vortex of Congressional Investigations?*, 21 WHITTIER L.REV. 797, 821–30 (2000); Dawn Johnsen, *Executive Privilege Since United States v. Nixon: Issues of Motivation and Accommodation*, 83 MINN. L.REV. 1127, 1127–28, 1131 (1999); Randall K. Miller, *Congressional Inquests: Suffocating the Constitutional Prerogative of Executive Privilege*, 83 MINN. L.REV. 631, 635, 684–85 (1997); Jeffrey P. Carlin, Note, *Walker v. Cheney: Politics, Posturing and Executive Privilege*, 76 S.CAL. L.REV. 235, 270–771 (2002).
9. See *U.S. v. Nixon*, 418 U.S. at 708, 712–14. The *Nixon* test is used in spite of the *Nixon* Court’s admonition that its analysis does not necessarily apply to legislative/executive disputes. *Id.* at 712 n. 19.
10. See *U.S. v. Nixon*, 418 U.S. at 706, 710–11. See also *In re Sealed Case*, 121 F.3d 729, 743 n.12 (D.C. Cir. 1997) (*Nixon* Court implied that the national security based privilege is “close to absolute”).
11. U.S. CONST. art. I, § 8, cl. 18.
12. Cf. *Bowsher v. Synar*, 478 U.S. 714, 733–34 (1986) (“once Congress makes its choice in enacting legislation, its participation ends. Congress can thereafter control the execution of its enactment only indirectly”); *Youngstown Sheet & Tube Co. v. Sawyer*, 343 U.S. 579, 637 (1952) (Jackson, J., concurring) (referring to “zone of twilight” in which “distribution [of power between President and Congress] is uncertain”).
13. See discussion of such founding era statements in Part II of this essay. Executive privilege proponents also argue that a series of post-ratification information disputes between the president and Congress reflect an early embrace of executive privilege. As I explain in the article on which this essay is based, there are substantial flaws in the post-ratification arguments. See Kitrosser, *supra* note 6 at Section III(A)(1).
14. See Kitrosser, *supra* note 6 at Section III(B)(1) (exploring these arguments in greater detail and with supporting citations).
15. See, e.g., 1 FARRAND’S REPORTS 112 (quoting George Mason: “The chief advantages which have been urged in favor of unity in the Executive, are the secrecy, the dispatch, the vigor and energy...”); *id.* at 70 (quoting James Wilson to similar effect).
16. See Kitrosser, *supra* note 6 at Subsection III(B)(3)(b) (explaining this argument and the premise of relative legislative openness in greater detail).
17. THE FEDERALIST No. 70, at 423–24 (Alexander Hamilton) (Clinton Rossiter ed., 1961).
18. *Id.* at 427–30.
19. See, e.g., Christina E. Wells, “National Security Information” and the Freedom of Information Act, 56 ADMIN. L. REV. 1195, 1199 (2004); Note, *Keeping Secrets: Congress, the Courts and National Security Information*, 103 HARV. L.REV. 906, 907–10 (1990).
20. See Note, *Keeping Secrets*, *infra* note 19 at 917.
21. See Kitrosser, *supra* note 6 at Part V (summarizing numerous current and historical arguments to this effect).

A DISCOURSE:

Presidential Powers in Time of War

“Our whole constitutional heritage rebels at the thought of giving government the power to control men’s minds,” said Supreme Court Justice Thurgood Marshall, who, as a misbehaving schoolboy, was once given the punishment of reading the entire U.S. Constitution.

In the spirit of such constitutional heritage and free thinking, Law School faculty regularly gather to challenge each other’s views, to take on legal issues pertinent to the current political and social landscape, and to engage in discourse that ultimately becomes scholarship. This kind of academic interaction has taken place in a variety of settings, from formal panel discussions to more intimate coffee-klatch style office get-togethers.

So it was just a matter of time, really, before the setting for intellectual discussions took a more technological turn. In this case, e-mail has facilitated a discussion of the merits and liabilities of expanding executive privilege in a time of war. Professors Michael Paulsen, Heidi Kitrosser, and Dale Carpenter bring their collective constitutional law interest, insight, and expertise to the following e-mail exchange, which took place in February 2006.—*Eds.*

Associate Dean Michael Stokes Paulsen

ONE OF THE HOTTEST issues of the day is presidential power in time of war—specifically the president’s power unilaterally to order the interception of overseas communications by persons in the United States who have been in contact with al Qaeda forces and terrorists.

Some of my colleagues may well disagree, but I think the issue is relatively straightforward. The president’s power as military commander in chief, in time of constitutionally authorized war, of course includes the power to intercept enemy communications, including enemy communications with persons here in the United States who may be in league with the enemy, and to follow the chain of such

communications where it leads, in order to wage the war against the enemy and, of vital importance, to protect the nation against further attacks.

There is no doubt that we are at war. On Sept. 18, 2001, Congress issued what is arguably the most sweeping declaration of war in our nation’s history, authorizing the president to employ “all necessary and appropriate force” against those nations, “organizations or persons” that “he determines” planned, authorized, committed or aided the 9/11, attacks, or who harbor such persons or organizations. The last clause of the authorization is important: “in order to prevent future acts of international terrorism against the United States” by such organizations. We are at war.

Congress has declared the war, and granted the president sweeping authority to wage it as he sees fit, in order to defend against future attacks by al Qaeda and its allies.



Clearly, the commander in chief powers of the president are fully in play. Those powers unquestionably include the power to gather intelligence concerning communications with the enemy forces with whom we are at war. I would go so far as to say that if the president failed to monitor such communications, he would be grossly derelict in his commander in chief responsibilities.

As a straightforward matter of constitutional law, Congress may not by statute purport to take action displacing the president's constitutional power as commander in chief. If some action falls within the commander in chief's power, a statute may not limit it. In this sense, the Foreign Intelligence Surveillance Act (FISA) either must be construed as not limiting these powers—this seems the view most consistent with judicial decisions in this area—or else FISA is an unconstitutional restriction on the president's power as commander in chief in time of authorized war-making. My own view is that FISA is best understood as a “safe harbor.” Congress has provided a framework for obtaining a warrant (of a certain type) that should permit the introduction of evidence obtained by such surveillance in a criminal prosecution, if prosecution should be the course of action the executive branch chooses to take with respect to an al Qaeda operative or spy who happens also to be a U.S. citizen or resident alien.

But ordinary criminal prosecution is certainly not the only option for dealing with captured enemy persons in time of war. Such persons can simply be held as prisoners for the duration of the war (whether or not entitled to legal POW status under the Geneva Conventions). They may be subjected to “military commission” proceedings, for violations of the law of war, in which various civilian “exclusionary rule” principles may not apply. (Of course, detention and military tribunal prosecutions themselves have presented some of the most interesting constitutional questions before the courts in the past three years.)

Finally, the Fourth Amendment bars “unreasonable” searches and seizures and does not invariably require warrants. Just as airport metal detectors are deemed “reasonable” (I've never been presented with a warrant as I half-strip and empty my pockets), so too the interception of communications of persons in contact with enemy forces, in time of war, is surely not an unreasonable search and seizure.

Associate Professor Heidi Kitrosser

THE BUSH ADMINISTRATION'S appetite for unfettered power has been observed with some frequency during the past several years. The NSA spying controversy marks one of the more alarming manifestations of this appetite.

In my view, neither constitutional text, with its careful balancing of military and domestic powers between executive and legislature, nor constitutional history, which is steeped partly in fears of an out-of-control monarch, can justify a unilateral presidential power to authorize the interception of American's overseas calls.

As Professor Paulsen's reasoning reflects, the arguments in support of such a presidential power rely on two major points: (1) the executive has an inherent power to engage in such activity (or at least has such power in wartime—proponents of such power argue, pursuant to point #2 below, that we currently are in wartime as declared by Congress); (2) Congress' Sept. 18, 2001 Joint Resolution not only declared war and thus created the conditions underlying point #1, but also in fact directly authorized the claimed presidential power.

The first point proves way too much to be consistent with our constitutional system of balanced military and domestic powers. As Justice O'Connor noted in *Hamdi v. Rumsfeld*, “a state of war is not a blank check for the president when it comes to the rights of the Nation's citizens.” Indeed, Articles I and II of the Constitution outline a system of shared powers even with respect to military matters. Thus, while the president is the “commander in chief,” it is for Congress to declare war in the first place, to provide for the common defense, to raise and support the army and navy, to “make Rules for the Government and Regulation of the land and naval Forces,” and to make other laws “necessary and proper” to effectuate its own powers and those of the president. And of course, it is the legislative process through which domestic legislation and legislation affecting citizens' rights generally must pass.

...the “Use of Military Force” in no way clearly or intuitively encompasses the power to intercept Americans' phone calls with persons overseas.

Furthermore, a quick review of the nature of the legislative process elucidates why it is so crucial that wartime not be deemed a “blank check” for presidential activity, particularly presidential activity that impacts citizens' rights. The Constitution brilliantly provides for open, dialogic, multi-branch review before legislation may be passed. This process is among the Constitution's most important protections against government tyranny. Among other things, it reflects the founding generation's well-known fear of monarchical power. Were a declaration of war automati-

cally to generate presidential power to monitor American's phone conversations whenever the president claims a link to terrorism, the careful protections of Articles I and II would lose much meaning.

The second major point raised in support of the Bush administration's actions—that the Joint Resolution not only declares war, but also more directly authorizes President Bush's actions. This is inconsistent with the text and history of the legislation and with the constitutional system already described. First, the legislation's text speaks almost entirely of military force. Indeed, the Joint Resolution is entitled the "Authorization for Use of Military Force." Naturally, the use of military force will require some activities incidental to such use. But the "Use of Military Force" in no way clearly or intuitively encompasses the power to intercept Americans' phone calls with persons overseas. The counterintuitive nature of this association is exacerbated by the context in which the Joint Resolution was created—one in which existing legislation already comprehensively addresses the monitoring of calls made by U.S. citizens. Indeed, the Congressional Research Service recently concluded that FISA pertains to precisely the type of surveillance engaged in by the Bush administration.

Furthermore, were the Joint Resolution's text and FISA's existence insufficient to belie the Bush administration's interpretation of the Joint Resolution, the Resolution's history does just that. In a *Washington Post* op-ed piece of Dec. 23, 2005, former Senate Majority Leader Tom Daschle, who helped to negotiate the Joint Resolution with the White House counsel's office, states "categorically" that:

the subject of warrantless wiretaps of American citizens never came up. I did not and never would have supported giving authority to the president for such wiretaps. I am also confident that the 98 senators who voted in favor of authorization of force against al Qaeda did not believe that they were also voting for warrantless domestic surveillance.

In the same op-ed piece, Daschle explains that the administration had sought to include language in the Joint Resolution which, while not mentioning or encompassing wire-tapping, would generally have accorded the White House broader discretion than the Joint Resolution ultimately accorded it and would explicitly have authorized the use of force within the United States. Significantly, this proposed language was rejected.

Given the Joint Resolution's text and history and the existence of FISA, a construction of the Joint Resolution that would encompass the powers claimed by the Bush administration could stem only from a vision of presidential power so broad as to demand such construction. But this only brings us back to the Constitution's careful balance of powers. For such a vision of presidential power is antithetical to the checks and balances brilliantly reflected in Articles I and II of the Constitution.

Professor Dale Carpenter

THE PRESIDENT'S POWER to authorize warrantless surveillance of communications in the United States must come, if it exists at all, from either (1) a power lawfully given him by Congress, or (2) a power he unilaterally and irrevocably enjoys under the Constitution.

(1) FISA forbids electronic surveillance of communications in the United States unless approved by a court. By its own terms, FISA is the "exclusive means by which electronic surveillance...may be conducted." (18 U.S.C. Sec. 2511[2][f].) It covers the field. Except as allowed under FISA, such surveillance is criminal. The statute is not ambiguous on this point, so there is no reason to invoke the constitutional avoidance canon of statutory construction to read it some other way.



The Justice Department appears to concede that the NSA program is not affirmatively authorized by FISA procedures. Instead, it contends that Congress authorized warrantless surveillance, despite FISA, in the Authorization for Use of Military (AUMF) force of Sept. 18, 2001. It's true that the AUMF gives the president fairly broad power to

respond with force to the terrorist attacks of Sept. 11, 2001. (One consequence of the administration's aggressive claims of power under the AUMF is that future Congresses may be more careful—even too careful—in future force authorizations.) But two qualifications count against the DoJ's argument.

First, the AUMF does not give the president unlimited power to respond to the attacks. The AUMF gives the president power to respond only with "necessary and appropriate force." While gathering intelligence about foreign enemies is surely part of wielding military force, warrantless spying on Americans in the United States is—while not unprecedented—surely a very ambitious application of such force. Past historical examples of warrantless domestic surveillance of enemies—such as those conducted by FDR in World War II—were done with clear congressional approval, and never in the face of federal statutory disapproval.

Also, if the president could effectively conduct surveillance within the United States under FISA's own procedures, the NSA program is not "necessary" and thus not authorized under the AUMF. Since 1978, the executive branch has sought wiretap permission from the FISA court some 19,000 times. Only a handful of those requests have been denied. FISA even allows the attorney general to authorize surveillance for 72 hours on an emergency basis before seeking court approval. (The time period was increased from 24 hours after 9/11 by Congress in order to give the executive precisely what he says he needs here: more flexibility to conduct warrantless surveillance.) The administration has not established why the compliant FISA court and

flexible process under which it operates is too cumbersome to accommodate current surveillance needs. So it hasn't established that warrantless domestic spying is "necessary" under the AUMF. "Trust me on this" is simply insufficient.

Second, because the AUMF does not explicitly repeal or amend FISA, the president argues that it does so by implication. But implied repeals of legislation are strongly disfavored, accepted only when two statutes are irreconcilable. FISA and the AUMF are not irreconcilable; they can be read together to give the president broad power to deal with the aftermath of 9/11, limited by established and specific legal precommitments to prevent abuse of such power in the domestic sphere. On this view, if the NSA program violates FISA (as I have argued) and FISA is a constitutional exercise of Congress's power to regulate surveillance activities in the United States (as I'll argue in a moment), then the NSA program is not an "appropriate" exercise of force and is thus not authorized by the AUMF.

The administration proposed, but leaders in Congress rejected, language in the AUMF that would have extended the president's power to use force specifically "in the United States." The president is thus attempting to do under the guise of interpretation of the AUMF what he could not achieve in the actual legislation.

...when [the president] directs that considerable power inward, toward the United States itself, special concerns arise from the history of the abuse of executive power and from the nation's commitment to civil liberties.

The NSA program is thus contrary to existing federal law. Congressional opposition to warrantless domestic surveillance is far clearer here than was Congress's opposition to Truman's action in *Youngstown Steel*, where the court rejected a claim of broad executive authority to conduct war. Unless the president has some independent constitutional authority to conduct warrantless domestic spying and unless that independent authority is not subject to congressional limitation or regulation, he is acting unconstitutionally.

(2) The president's top priority must be to defend the country against attack, but he does not have limitless constitutional power to do so. Notably, there is no "necessity clause" in the Constitution giving the president authority to do whatever he thinks necessary to protect us. The security of the United States is no more the sole constitutional fiefdom of the president than legislation is the sole fief of Congress, or the Constitution itself is the sole fief of the Supreme Court. The president's powers over security are shared and blended with the other branches. The president is commander in chief of the army and navy, which most obviously means that he has operational control over the

military when force is authorized. This general presidential power, however, is subject to specific constraints elsewhere in the Constitution. One constraint on the president's general command authority is Congress's specific power "to make Rules for the Government and Regulation of the land and naval Forces." Art. I, Sec. 8, cl. 14. FISA is one such regulation.

The Constitution further gives to Congress, not to the president, the power to make laws "necessary and proper" to carry into execution its own powers and "all other Powers" enjoyed by any part of the federal government, including the executive. (Art. I, Sec. 8., cl. 18.) This leaves to Congress the judgment about what legal authority is needed to make effective the president's own powers, including the commander in chief power. If gathering intelligence about the enemy is an incident of the president's commander in chief power over the military, then limiting the use of that power within the United States is an incident of Congress's Article I authority to legislate its execution.

Once Congress has regulated the president's use of his war powers inside the United States, he can no more violate the law for reasons he believes are good than he could collect more taxes than Congress has authorized because he thinks the government needs more money for the war or appoint more justices to the Supreme Court without the advice and consent of the Senate because he thinks the Court is deciding war-related cases incorrectly.

The president has expansive powers under the Constitution and under the AUMF to fight the country's foreign enemies. But when he directs that considerable power inward, toward the United States itself, special concerns arise from the history of the abuse of executive power and from the nation's commitment to civil liberties. When the president fights a war inside the United States, the balance between the needs of national security and the liberties of the people, between the danger of catastrophic attack and the danger of repression, is better struck by involving all three branches of the federal government than by acquiescing to the diktat of one.

If the president believes that FISA is inadequate to deal with the war on terror, he should make that case before the body that has the constitutional responsibility to make law in this republic—the Congress. He may believe with all his heart that he needs the authority to conduct warrantless spying on people in the United States in order to protect the country from another devastating attack. He may be right about that. But more than two centuries ago this nation rejected the principle that one person could run the country, even for very good reasons, in favor of a more cooperative and democratic approach that better serves both liberty and security.

Associate Professor Heidi Kitrosser

I'D LIKE TO add one point to Carpenter's excellent arguments about FISA's provisions. FISA also authorizes the Attorney General to conduct electronic surveillance



without a court order for up to 15 days following a Congressional declaration of war. The legislative history suggests that this provision is intended to give Congress time to consider any necessary changes to FISA in light of the war declaration. This provision has three negative implications for the White House's arguments in the current controversy:

- First, it is very likely, as the Congressional Research Service has suggested, that this 15-day exemption does not apply to the AUMF, as the latter *does not constitute a congressional declaration of war*. (See Congressional Research Service, Presidential Authority to Conduct Warrantless Electronic Surveillance to Gather Foreign Intelligence Information at 26 [2006]).
- Second, assuming that the 15-day exemption does not apply here, it would be deeply counterintuitive to read an unspoken, substantially broader exemption into FISA allowing for years of secretive electronic surveillance following a resolution of force.
- Third, even if the 15-day exemption does apply to the AUMF, its terms clearly were exceeded by the president's secretive surveillance program of several years. And again, the notion that more substantial leeway implicitly is authorized by FISA is virtually unthinkable in light of FISA's careful enunciation of the 15-day exemption.

The president thus is left only with the argument that Article II allows him to operate in a manner contrary to FISA. For reasons already argued, such a reading of Article II is inconsistent with the Constitution's careful balance of powers.

Associate Dean Michael Stokes Paulsen

THE KEY PROBLEM with my colleagues' extraordinarily thoughtful points about the NSA communications interception program is this: They read the Sept. 18, 2001, AUMF as if it were any old statute passed by Congress.

If (as I believe), the AUMF is in legal effect a Declaration of War, then arguments that "repeals by implication are disfavored," or that "the AUMF does not specifically mention surveillance," or that "Congress did not have this in mind" (or, in its weakest form, that former Senator Tom Daschle was not thinking about this specific question), or that the president might have been able to obtain FISA authorization, are almost entirely irrelevant.

If *war* has been authorized, then the commander in chief power to wage war against enemy forces has been unleashed in its entirety. That power is a fearful and formidable one, but properly so. Where war is declared or authorized, the president possesses the full military and executive power of the nation with respect to waging that war. The president determines matters of military strategy and tactics; the rules of engagement with the enemy; the means and methods to be employed; how resources are to be deployed; and whether, when, and under what circumstances hostilities will be terminated.

Whatever the scope of the president's constitutional power as commander in chief in time of authorized war, no statute of Congress constitutionally may limit it.

Where the commander in chief power is brought into play, it is the president's power alone. No statute of Congress may limit it. As Alexander Hamilton put it in *Federalist #74*: "Of all the cares or concerns of government, the direction of war most peculiarly demands those qualities which distinguish the exercise of power by a single hand. The direction of war implies the direction of the common strength; and the power of directing and employing the common strength forms a usual and essential part in the definition of the executive authority."

Here is the crucial point: Whatever the scope of the president's constitutional power as commander in chief in time of authorized war, no statute of Congress constitutionally may limit it. This is basic *Marbury v. Madison*: If the Constitution provides one thing, Congress may not pass a statute altering it. Congress has the choice whether or not

to trigger the commander in chief power of the president in time of war; but if it chooses to do so, it may not control the exercise of that power with collateral statutory restrictions. Put simply: When war is declared, the commander in chief chooses how to conduct it.

Nowhere is this more clear than in the Sept. 18, 2001 AUMF, which sweepingly gives the president power to use “all necessary and appropriate force” against those nations, organizations, or persons he finds to be connected to the events of Sept. 11, 2001.

If the interception of communications of persons in contact with the enemy is a legitimate part of the commander in chief’s conduct of war—and I think this almost impossible to deny—then no act of Congress may impair it. If FISA, designed as peacetime authorization for covert surveillance of suspected foreign agents, limits the commander in chief power in time of war, it is to that extent unconstitutional. That’s the endpoint of the game, when push comes to shove. Professor Kitrosser’s arguments about how to read FISA are excellent ones; but in the end if FISA cannot be construed in a manner consistent with the president’s overarching power as commander in chief in time of war, then it is the FISA statute that must yield, not the president’s constitutional power as commander in chief.

Professor Carpenter’s argument that Congress’s power to make “Rules for the Government and Regulation of the Land and Naval Forces” trumps the president’s power as commander in chief is, I think, unsound—and dangerous. Congress’s power to prescribe general rules for regulating our armed forces surely cannot be read as a power to dictate rules for how military and defensive efforts are to be conducted by the president. That would effectively read the commander in chief clause out of the Constitution! The same cannot be said the other way round:

Congress’s power to regulate the military still has content, as a general proposition; it is simply limited by the president’s power to direct and conduct offensive and defensive operations—to command—in wartime.

The alternative is to run war operations by committee—by Congress. That was one of the grave defects of the Articles of Confederation that the framers of the Constitution (including General George Washington) sought to remedy by making “a single hand,” the president, the commander in chief of the armed forces, and of the militia, when called into actual service.

Professor Dale Carpenter

PROFESSOR PAULSEN MAKES several provocative policy assertions about the president’s wartime powers. Remarkably absent from his discussion is any sustained attention to the constitutional text or any consideration of the types of concerns that caused the founding generation to break from colonial and monarchical control. Nothing in the Federalist papers, including Hamilton’s writings, suggests that the president’s wartime power is illimitable. An energetic president, yes; wartime king, no.

“If (as I believe), the AUMF is, in legal effect, a Declaration of War, then [standard arguments about statutory interpretation] are almost entirely irrelevant.”

Having practically conceded the statutory arguments, Professor Paulsen now says they don’t matter because the president has unlimited war-making authority. Yet the Constitution does not provide that in time of war all bets are off—that all powers of government are put at the president’s disposal to use as he pleases. There are special provisions that deal with wartime emergencies (e.g., allowing Congress to suspend habeas corpus in cases of invasion or rebellion, Art. I, Sec. 9, cl. 2), but notably none of them are in Article II. There is no general “emergency clause” or “necessity clause” holding the usual rules automatically in abeyance, and certainly none that give the president such power.

“If war has been authorized, then the commander in chief power to wage war against enemy forces has been unleashed in its entirety.”

This is a restatement of the problem, not an argument. The very question here is what the “entirety” of the commander in chief power is and whether and to what extent it may be limited by the co-equal branches of the government. Those who resist the president’s claim of power to engage in domestic warrantless spying argue that his war power does not extend in this way to the domestic sphere where Congress has acted to the contrary, as it has in FISA.

“Where the commander in chief power is brought into play, it is the president’s power alone. No statute of Congress may limit it.”

What is the basis for this extraordinary claim? Congress has two explicit and specific powers that seem to limit, when exercised, the president’s commander in chief power: the power to make rules and regulations for the armed forces and the power to make laws effectuating the president’s own powers. Nothing in the text declares the president’s powers immune to these provisions, even in wartime. Indeed, the Constitution itself makes no general demarcation between wartime and peacetime powers.

“Congress’s power to prescribe general rules for regulating our armed forces surely cannot be read as a power to dictate rules for how military and defensive efforts are to be conducted by the president... The same cannot be said the other way round: Congress’s power to regulate the military still has content, as a general propo-

sition; it is simply limited by the president's power to direct and conduct offensive and defensive operations—to command—in wartime.”

This passage both errs and oversimplifies the division of war-related authority between Congress and the president. First, while Professor Paulsen suggests that the Rules-and-Regulations Clause “has content,” he appears to think that its content is alterable at the will of the president in the use of his power to conduct a war. But the president cannot unilaterally change the scope of congressional power: This is, one might say, basic *Marbury v. Madison*. No fewer than seven of the 18 clauses enumerating congressional power deal with military or war-related matters. We need a theory for what the content of the respective war powers of the president and Congress are, whose power prevails in the event of a conflict, and under what sorts of circumstances.

Second, while the commander in chief authority surely gives the president the power to control the operational details of military action, it does not obviously give him the power to do whatever he pleases to facilitate the use of military force, even where *war* has been declared, and especially where he turns that might inward toward the United States itself.

In the war on terror, even more than other wars, there is no clear line between domestic and foreign war-fighting. Thus, to accept Professor Paulsen's concept of unlimited executive war power is to cede to the president practically dictatorial control over the whole country.

The Constitution's blending of war powers among the branches does not reasonably admit the stark either-or, categorical approach Professor Paulsen advocates. It is helpful to think of the question of the president's and Congress's war-related authority as involving a continuum. On one end we have clear exercises of operational control of military forces against a foreign enemy abroad. The president's power to act on behalf of the whole country is at its height when he acts on matters of foreign affairs and/or matters of core operational control of the military directed outward, away from the United States itself. Shall we invade at the Pas de Calais or at Normandy? Shall we do so on June 5 or June 6? These are decisions it would indeed be “unsound” and “dangerous” to confide to Congress. These “military and defensive efforts” would be clearly within presidential command authority.

On the other end of the continuum are all the ways in which events at home may affect the war effort. Money is necessary for war; but the president could not raise taxes on his own, even if he believed it was absolutely vital to do so. Guns are essential; but he could not seize the steel industry against a contrary legislative command. Conscripts are critical; but he could not unilaterally institute a draft. Public support is vital; but he could not jail dissenters on the ground that they were sapping morale. The Constitution itself limits the president's command authority in each of these areas. All of them are for Congress to deal with in the first instance, if they can be dealt with at all.

One way to think of this continuum is that it ranges from actions clearly foreign and command-operational (and thus clearly within the president's commander in chief power) to actions purely domestic and non-operational (and thus clearly within Congress's legislative powers). The Constitution tells us the president is commander in chief “of the Army and Navy,” not “of the United States.”

There will be hard cases between these two poles. The president's authorization of warrantless surveillance within the United States is somewhere between the two ends of the continuum. The NSA program implicates military needs because it is gathering information about enemy plans. But it is not just a “military effort,” cut off from any domestic concerns. It occurs domestically and intrudes on the legitimate privacy interests of people inside the United States. As I'll explain, I believe the NSA program falls much closer to the congressional-power end of the continuum and is thus subject to congressional regulation, where Congress has chosen to regulate (as it has here through FISA).

So the question comes down to this: May the president order the warrantless surveillance of communications in the United States under his commander in chief power despite a congressional command that he may not? Or, may the Congress prohibit such warrantless surveillance under its Rules-and-Regulations power and its All-Other-Powers authority despite the president's strong desire to conduct warrantless surveillance?

Which war-related power controls the matter of warrantless domestic surveillance, the president's or the Congress's? Professor Paulsen does not even begin to grapple with this difficult question; he simply asserts the conclusion that the president's power controls no matter what.

Yet I can think of several reasons why the president's action turning force inward means that Congress's will, expressed in FISA, should prevail here. Briefly: (1) Congress enjoys the power to make laws relating to the president's own powers, including his commander in chief power, while the reverse is not true; (2) Congress, not the president, is given the power to regulate the armed forces; (3) domestic warrantless surveillance implicates, as the Justice Department acknowledges, not just military necessity but significant domestic civil liberties interests; (4) the history of abuse of domestic spying by presidents under the guise of protecting national security makes giving any president unchecked authority in this area very dangerous; and (5) the president has not shown how the legal alternatives he has under FISA are unworkable or, if they are unworkable, why he could not seek amendment of the law from a Congress that is responsible for making laws to protect national security.

I'm glad Professor Paulsen has reminded us of George Washington. General Washington understood the difference between running the war and running the country. President Washington would never accept a crown. We could use a bit more of that executive restraint today. ●



AT THE LAW SCHOOL At the close of academic year 2005–06, mighty changes were in the works. After four years of service and continued improvements at the Law School, Dean Alex M. Johnson, Jr., announced his resignation, and two faculty members stepped in as interim leaders. Long-time Professor Fred L. Morrison and Professor Guy-Uriel E. Charles, a more recent addition to the faculty, will be reaching out to connect with alumni and students throughout the coming months and beyond regarding the Law School’s future. The foundation they’ll build on is highlighted in this section, which features a small sample of the events that took place throughout the winter and spring, including a distinguished guest lecture on human rights; a celebration of 90 years of the *Law Review*; the Race for Justice benefiting students and graduates who pursue public interest law; and a standing-room-only appearance by bestselling author-attorney Scott Turow.



Legalizing Human Rights

The University of Minnesota Law Library Distinguished Lecture Series, the Law Library, and the Human Rights Center Explore the Past and Present of International Justice

BY KATHERINE HEDIN, Curator of Rare Books and Special Collections

ON NOVEMBER 1, 2005, William A. Schabas, Professor of Human Rights Law and Director of the Irish Centre for Human Rights at the National University of Ireland, Galway, delivered the third annual lecture of the University of Minnesota Law Library Distinguished Lecturer Series. Professor Schabas's lecture, "Dachau to Darfur: Arresting Impunity with International Justice," was cosponsored by the Law Library and the University of Minnesota Human Rights Center. The lecture and an accompanying exhibit, "Defending Human Rights: The Legacy of Dachau and Nuremberg," were presented in commemoration of the 60th anniversary of the war crimes trials at Dachau and Nuremberg. The exhibit highlighted valuable and unique photographs and documents collected by Horace R. Hansen, a St. Paul, Minn.-based attorney and a prosecutor of war crimes trials at Dachau.

Professor Schabas's presentation focused on the development of international criminal prosecution, with particular emphasis on the development of the International Criminal Court (ICC). He explored various explanations for the overt hostility of the United States toward the ICC,

especially in light of U.S. support for international criminal justice. "The paradox of the hostility of the current government of the United States toward the ICC," notes Schabas "is the fact that it is set in a background of 60 years of great enthusiasm for international criminal justice, unmatched by any other government in the world."

This support, dating back to the war crimes trials of Dachau and Nuremberg, flows from the idea that human rights are "on the agenda"—that they stand at the heart of the war aims of the Allies of World War II. Indeed, Schabas asserts the success of the ICC, which had been ratified by 100 countries at the time of his lecture, leads to one conclusion: This is an idea whose time has come.

Professor Schabas examined the development of the concept of crimes against humanity, first articulated in 1945 to cover atrocities, persecutions, and deportations committed against a civilian population on the grounds of race, political belief, and religion. At the London Conference to draw up plans for the prosecution of the Nazis, Justice Robert Jackson argued for a key limitation. Conscious that the United States' own conduct toward its minorities amounted to what he termed "regrettable circumstances," Jackson convinced the other conference partic-

William A. Schabas, Professor of Human Rights Law and Director of the Irish Centre for Human Rights at the National University of Ireland, Galway, delivered the third annual lecture of the University of Minnesota Law Library Distinguished Lecturer Series.

ipants to limit crimes against humanity to those acts committed in connection with war. Jackson stated:

[O]rdinarily we do not consider that the acts of a government toward its own citizens warrant our interference. We have some regrettable circumstances at times in our own country in which minorities are unfairly treated. We think it is justifiable that we interfere or attempt to bring retribution to individuals or to states only because the concentration camps and the deportations were in pursuance of a common plan or enterprise of making an unjust or illegal war in which we became involved. We see no other basis on which we are justified in reaching the atrocities which were committed inside Germany, under German law, or even in violation of German law, by authorities of the German state.¹

As Professor Schabas noted, "You can imagine this room...there's someone from the United Kingdom—I can just see the guy scratching his head, saying 'That's a good point. You know, now that you mention it, think of India, Nigeria, and Ghana...'" Thus, prosecution of the Nazi atrocities became the prosecution of war crimes. Professor Schabas then picked up another strand of the developing human rights framework: the concept of genocide. In reaction to what Professor Schabas described as the "ugly limitation" restricting crimes against humanity to wartime, developing countries came to the United Nations to put genocide on the UN agenda. The UN adopted the Genocide Convention in 1948 to address states that perpetrate narrowly defined atrocities (i.e., genocide) against their own people during peacetime. Until 1995, these two strands—genocide and wartime crimes against humanity—remained separate. A decision from the International Tribunal for the former Yugoslavia (ICTY), however, united them.² The ICTY ruled that crimes against humanity can



Regent Frank R. Berman, '65, and Associate Dean Joan S. Howland



The Law Library Distinguished Lecturer Series was presented in cooperation with the University of Minnesota Human Rights Center, under the direction of Professor David Weissbrodt, above.

The Hansen archives contain personal photographs of the courtroom at Dachau, including a chilling photograph of 40 defendants, with Hansen's handwritten annotation, "These are the bastards now on trial."

occur during peacetime. Professor Schabas summarized the current state of international law as follows: "Crimes against humanity cover all gross and systematic violations of human rights. This is codified in the Rome Statute of the International Criminal Court."

To show the impact of this change, Professor Schabas touched briefly on the situation in Sudan. While much discussion of Sudan's actions in Darfur has focused on whether genocide is occurring, he emphasized that the UN has affirmed that Sudan's actions amount to crimes against humanity. In his view, this affirmation has been "grievously misunderstood" as some trivialization of what is happening in Darfur: "If they put you in the same category as the Nazis, Hitler, Bormann, and Goering...that's a pretty terrible crime."

Professor Schabas concluded by summarizing the development of legal principles and institutions since Hansen, prosecutor of the war crimes division for the U.S. Third Army, tried Nazi war

criminals after World War II. Schabas noted that the legal principles have expanded to address crimes during both war and peace, and that the international community now has a permanent institution to prosecute such crimes. As Professor Schabas concluded, "That's pretty good progress in 60 years, and I think Horace Hansen would have been proud of us for doing it."

In conjunction with Professor Schabas's lecture, the Law Library and the Human Rights Center staged an exhibition—"Defending Human Rights: The Legacy of Dachau and Nuremberg"—focusing on war crimes. The exhibition took place in the Riesenfeld Rare Books Research Center at the Law School. The centerpiece of this exhibit is the Horace R. Hansen Archives, a unique collection of photographs and documents collected by Hansen and donated to the University of Minnesota Law Library in May 2005 by his family. The exhibit was opened by the Honorable Frank

R. Berman, '65, Regent of the University of Minnesota. Regent Berman is a member of the United States Holocaust Memorial Council, the governing body of the U.S. Holocaust Memorial Museum in Washington, D.C.

Hansen (1910–1995) received his J.D. from the St. Paul College of Law (now the William Mitchell College of Law) in 1933. Before joining the armed forces in 1943, Hansen served as a prosecuting attorney in the Ramsey County (Minn.) Attorney's Office.

The Hansen archives include personal pictures of the surrender of German soldiers and officers in the weeks leading up to V-E Day, May 7, 1945. In one of Hansen's extensive letters home, he wrote, in his characteristic straightforward manner, "When the great V-E news is announced, there is mild excitement lasting about five minutes. Then everyone goes back to work."

The archives include a complete file of these letters, which were widely circulated and published in the *St. Paul Dispatch*.

Hansen's transfer in January 1945 to the Judge Advocate's General Corps with assignment to the war crimes division led to his appointment as a

prosecutor at Dachau. The Hansen archives contain personal photographs of the courtroom at Dachau, including a chilling photograph of 40 defendants, with Hansen's handwritten annotation, "These are the bastards now on trial."

On Hansen's staff at Dachau were five of the eight stenographers who had recorded verbatim Hitler's military-situation conferences. Hansen conducted interviews with each of these recorders, documenting first-hand information about Hitler's rise to power and his command of the war. The archives include transcriptions of these immensely valuable oral histories. Of particular interest is an eyewitness account by Reichstagsstenograph Heinz Buchholz of the attempt on Hitler's life on July 20, 1944. Hansen's experiences as a prosecutor and his interviews with Hitler's chief recorders form the basis for his book, *Witness to Barbarism*, published in 2002.

After the war, Hansen became a partner in the St. Paul, Minn., firm now known as Hansen, Dordell, Bradt, Odlaug & Bradt. He was a nationally recognized expert in insurance, banking, and health law, and he served as general counsel for the Independent Bankers of America. Hansen was one of the founders of Group Health, now HealthPartners, and served as its counsel for many years.

The University of Minnesota Law Library and Human Rights Center gratefully acknowledge the support of Hansen, Dordell, Bradt, Odlaug & Bradt, as well as HealthPartners in making this exhibit possible. The Library and Center also appreciate the assistance of the University of Minnesota Human Rights Program and the Center for Holocaust & Genocide Studies as well as Minnesota Advocates for Human Rights. ●

FOOTNOTES

1. Minutes of Conference Session of July 23, 1945, in Report of Robert H. Jackson, United States Representative to the International Conference on Military Trials 333 (1949).
2. *Prosecutor v. Tadic*. Case No. IT-94-1-AR72, Decision on the Defense Motion for Interlocutory Appeal on Jurisdiction, at para. 141 (Oct. 2, 1995).



PHOTO BY JESSICA JOHNSON, CLASS OF 2007.

90 Years of *Law Review*

THE MINNESOTA LAW REVIEW honored its many accomplished alumni and celebrated the successful publication of the journal's 90th volume at its 2006 banquet in April. More than 250 *Law Review* board and staff members, faculty, administration, alumni, attorneys, and friends flocked to The Grand Hotel in Minneapolis for the event—making it the best-attended banquet in memory. Former Law School Dean Robert Stein, '61, who served the Law School from 1979–1994, delivered the keynote address. He commented on changes in the legal profession in the past decades and predicted future changes.

A highlight of the evening was the awarding of the second annual *Minnesota Law Review* Distinguished Alumni Awards, sponsored by Gray Plant Mooty. Awards were presented to:

- James Hale, '65, former general counsel to Target Corp.
- the Honorable John Tunheim, '80, U.S. District Court Judge, and
- Dean Robert Stein, executive director of the American Bar Association.

Special recognition also was given to members of Volumes 40 and 65, who served on the journal 50 and 25 years ago, respectively. As members of these

James Hale, '65, Robert Stein, '61, and John Tunheim, '80, received the Minnesota Law Review Distinguished Alumni Awards, sponsored by Gray Plant Mooty.

volumes reunited, all in attendance honored their accomplishments, which have contributed to the proud history of the *Minnesota Law Review*.

Volumes 35 and 36 Endowed Writing Awards were presented to staff members Amy Bergquist, '07; Todd Olin, '07; Daniel Robinson, '07; and Lindsey Tonsager, '07; for their contributions to the 90th Volume of the *Minnesota Law Review*. Those awards were presented by former *Law Review* editor-in-chief Richard Lareau, '52, who helped create the *Law Review's* Memorial Fund Award for Outstanding Staff Publication. Volume 89 editor-in-chief Ryan Miske, '05, presented the Leonard, Street and Deinard-endowed writing awards to board members Aaron Chapin, '06; Alyson Tomme '06; and Megan Backer, '06; for their exceptional scholarship.

Next year's banquet is scheduled for April 12, 2007. Nominations for the Distinguished Alumni Awards may be made at www.law.umn.edu/lawreview/alumni.html. ●

By Matthew D. Krueger, Class of 2006.

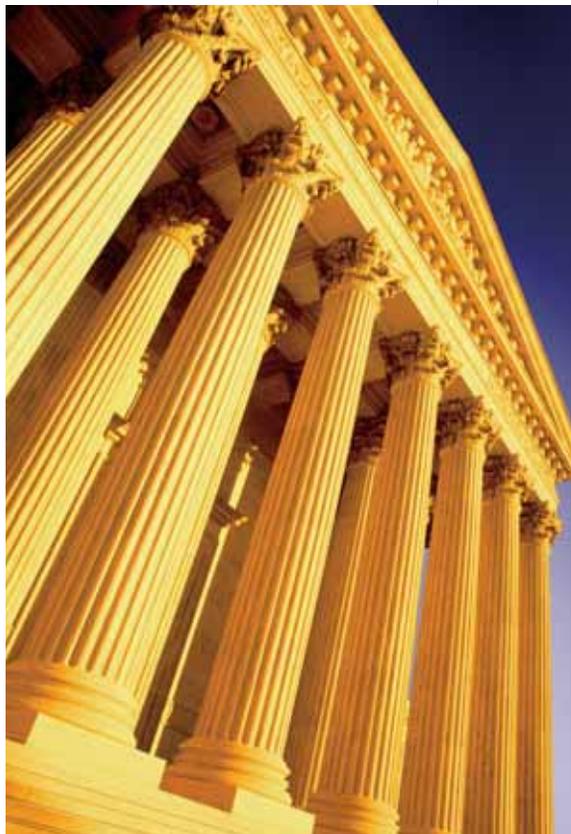
Minnesota Law Review Hosts Lindquist & Venum Symposium

“The Future of the Supreme Court and Beyond”

The nation’s leading constitutional and federal courts scholars addressed timely issues and drew national attention

ON FRIDAY, OCT. 21, 2005, the *Minnesota Law Review* hosted the Lindquist & Venum Symposium, “The Future of the Supreme Court: Institutional Reform and Beyond.” The symposium’s goal was to examine critical issues surrounding the Supreme Court as an institution, including justices’ status and tenure on the court, the importance of precedent in the court’s decision making, and the proper role of the Supreme Court in the constitutional structure. Underlying much of the discussion was the troublesome problem of politics and ideology interacting with fundamental notions of justice and equality. Although leaders and scholars have debated many of these same ideas since the beginnings of our nation, history and scholarly research continue to uncover new perspectives and create new proposals for finding a satisfactory balance. Indeed, history intervened again to coincide with the symposium, offering insight into two new Supreme Court vacancies, and reinvigorating a very public debate on the Supreme Court, its Justices, and politics.

Thirteen of the country’s leading constitutional law and federal courts scholars traveled to the Law School to participate in the symposium, including professors Adrian Vermeule, Randy Barnett, Mark Tushnet, Martin Redish, Kenneth Starr, and Steven Calabresi. The symposium consisted of an introductory presentation by Professor Vermeule on “The Obstacles to Supreme Court Reform,” followed by four panels that addressed various topics on the future of the Court. The first group of panelists discussed the role of precedent in the Supreme Court’s decision making, building upon the concept of “super precedent”



that quickly joined scholars’ vocabulary during the confirmation hearings for Chief Justice John Roberts. The second panel of the symposium examined the role of external influences on the justices’ decision making, such as individual backgrounds, cultural norms, and foreign laws. The recent nomination of then-Judge Samuel Alito to replace Justice Sandra Day O’Connor highlighted the importance of this panel’s discussion, as observers questioned the significance of a justice’s background. The symposium’s third panel addressed the tension between some of the intensely political controversies brought before the Supreme Court and the Constitution’s placement of the court above politics. Finally, given the increasingly long

tenures of justices, the fourth panel of the symposium assessed the interaction between the Supreme Court’s case docket, justices’ workload, and justices’ decisions about how long to remain on the court.

The Lindquist & Venum symposium attracted positive attention both at the Law School and elsewhere. More than 200 members of the Minnesota legal community attended the symposium

on campus, while others watched the event via live webcast. The day before the symposium, Minnesota Public Radio’s *Midmorning* program featured two of the symposium’s participants—Mark Tushnet (Georgetown University Law Center) and Kenneth Starr (Pepperdine University Law School)—in a discussion on the future of the court. Additionally, author Jeffrey Rosen examined issues on “super precedent” raised by symposium panelists Michael Gerhardt, Daniel Farber, and Randy Barnett in his Oct. 30, 2005, *New York Times* article, “So, Do You Believe in ‘Super Precedent?’”

The May 2006 issue of the *Minnesota Law Review* will feature the articles written for the symposium by each of the 13 participants. Further information on the symposium, including the archived Webcast of all panels and presentations is available through the *Minnesota Law Review* website, at www.law.umn.edu/lawreview/symposium.html. To access the Minnesota Public Radio program on the symposium, go to <http://news.minnesota.publicradio.org/programs/midmorning/listings/mm20051017.shtml>. To access the *New York Times* article discussing “super precedent,” go to www.nytimes.com/2005/10/30/weekinreview/30rosen.html. ●

By Karla Vehrs, Class of 2006.



It's Only Words

At the Kellar Lecture, attorney-author Scott Turow inspects the links between the law and our use of language

ATTORNEY AND BESTSELLING author Scott Turow has said that mystery novels deliver answers that life, and certainly the courtroom, cannot. Fiction, he explains, gives you a truth that reality can't always deliver.

In March, he entertained and informed an overflowing crowd at Lockhart Hall about the ways in which language shapes our storylines in life and in law. He presented "It's Only Words: Thoughts of a Lawyer & Novelist" at this year's Horatio Ellsworth Kellar Distinguished Visitors Program.

Turow is the author of seven best-selling novels, including his first, *Presumed Innocent* (Farrar Straus and Giroux, 1987), and his most recent, *Ordinary Heroes* (Farrar Straus and Giroux, 2005). He also has written two nonfiction books: *One L* (Farrar Straus and Giroux, 1977), captures his experience as a first-year Harvard law student (and has been read by generations of law students). *Ultimate Punishment: A Lawyer's Reflections on Dealing with the*

Death Penalty (Farrar Straus and Giroux, 2003) is a reflection on capital punishment.

The Illinois native has been a partner in the Chicago office of the national, 600-lawyer firm Sonnenschein Nath and Rosenthal LLP, since 1986. Turow's work focuses on white collar criminal defense, and he devotes a substantial part of his time to *pro bono* matters. He has served on a number of public bodies. In 2000, he was appointed by Governor George Ryan to the Illinois Commission on Capital Punishment to recommend reforms to Illinois' death penalty system, and he is a past president of the Authors Guild. Currently, he is chairman of Illinois' Executive Ethics Commission regulating executive branch employees and a trustee of Amherst College, his alma mater, in Massachusetts.

The Horatio Ellsworth Kellar Distinguished Visitors Program was established in 1996 by Curtis B. Kellar, '40, in memory of his father. Horatio

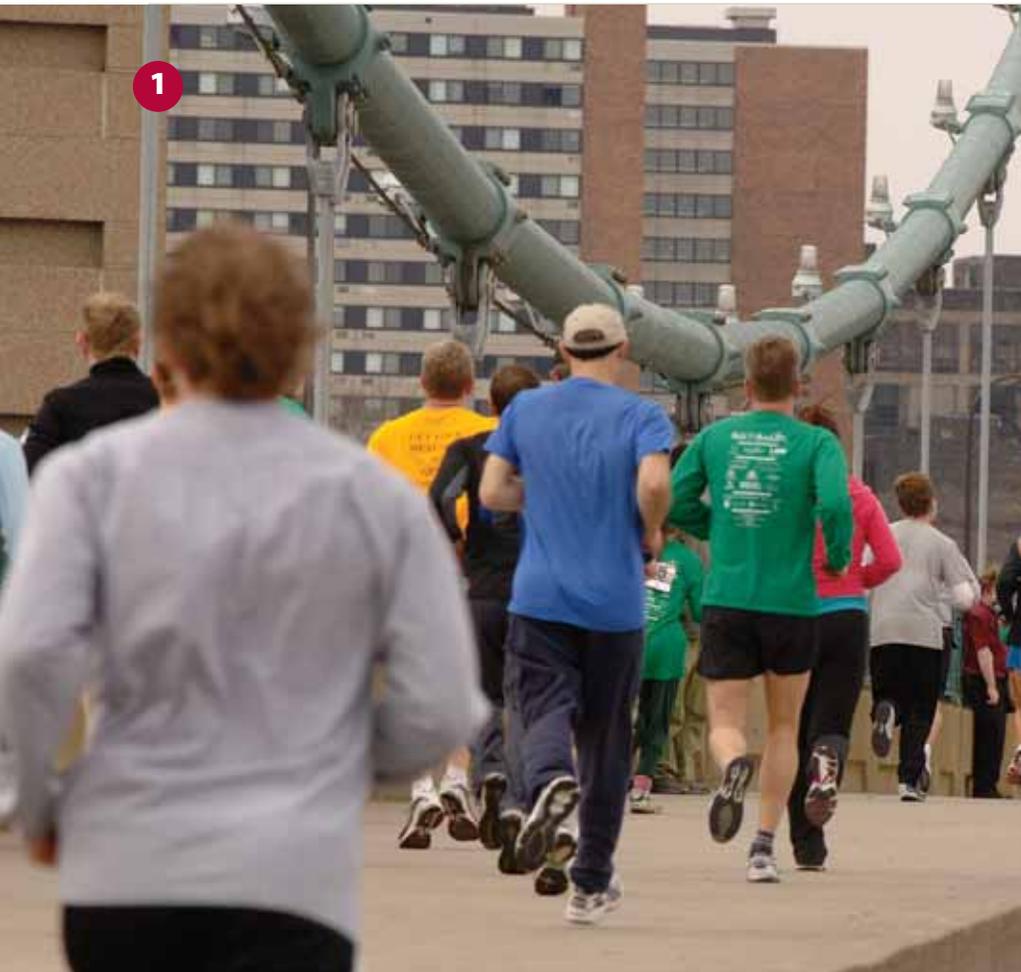
Attorney-author Scott Turow entertains an overflowing crowd at Lockhart Hall with an impression of one of his former professors.

Ellsworth Kellar was a banker in Albert Lea, Minn. In keeping with his father's interests, Curtis Kellar designed a lecture series at the Law School that is interdisciplinary in nature and connects emerging issues in the law with other disciplines such as art, drama, and literature.

The younger Kellar retired in 1981 from Mobil Oil Corp. He is a former member of the Board of Directors of the Law Alumni Association and of the Board of Visitors at the Law School. Kellar is the generous and visionary donor of The Curtis Bradbury Kellar Chair in Law (held by Professor Ann M. Burkhart), which the Law School named in his honor. ●

By Scotty Mann, assistant director of Alumni Relations and Annual Giving.

1



Race for Justice Attracts Hundreds of Participants, Breaks Attendance Record

COMMUNITY SUPPORT FOR PUBLIC INTEREST FUNDRAISER CONTINUES TO GROW.

More than 600 registrants, dozens of volunteers, first-ever Race underwriter Westlaw, and 27 other generous sponsors made the 4th Annual Race for Justice a tremendous success. Emeritus Professor Don Marshall served as the Ceremonial Starter for the 5K Fun Run and Walk on April 9, 2006, at historic Nicollet Island in Minneapolis.

The event attracted students, faculty, staff, and alumni from the University of Minnesota and other local law schools, as well as members of Minnesota's legal community.

Participants ran, rolled, and strolled to raise more than \$13,000 for the Loan Repayment Assistance Program of Minnesota (LRAP), which helps new attorneys provide legal assistance to the disadvantaged by subsidizing daunting education debts.

The 2006 Race also included the first Team Competition, inspiring friendly rivalry between more than 20 teams from the law school, legal services offices, law firms, and judicial districts. The Law School Cross Country Team blew away the nearest competitors for first place, led by overall race winner Chris Lundberg, '08. The second-place Sharks, reprising their roles from the 2006 TORT musical *West Bank Story*, proved that even corporate lawyers can do their part for public interest. Third-place winner Team Meagher & Geer also ran away with the prize for biggest team, with more than 20 participants.

Thanks to all who helped make the 2006 Race such a success. Mark your calendar for **Sunday, April 15, 2007**, our Fifth Annual Race for Justice!



2



3



4

1. Race participants head toward downtown Minneapolis across the Hennepin Avenue Bridge after circling Nicollet Island.

2. Student performers from the TORT production *West Bank Story* reprise their roles on Team "PILS" (Public Interest Law Students).

3, 4. Team Meagher & Geer got into the spirit with custom T-shirts and more than 20 participants, leading it to a third-place team finish.



5. Top women finishers include Annie O'Neill, '07 (3rd place), Emily Koller (2nd place), and Betsy Flanagan, '08 (1st place).

6. Top men included Chris Lunberg, '08 (1st place), Tom Church, '06 (2nd place), and Jay Nelson (3rd place).

7. Participants enjoyed refreshments, including oranges donated by Lunds.

8. Returning Race supporters Professor David Weissbrodt and colleague Dr. Sy Gross enjoy the fine Spring day.

9. Emeritus Professor Donald Marshall, who inspired generations of University of Minnesota graduates to infuse service into practice, cheers on race finishers.

10. A record-setting crowd starts the race on Nicollet Island.

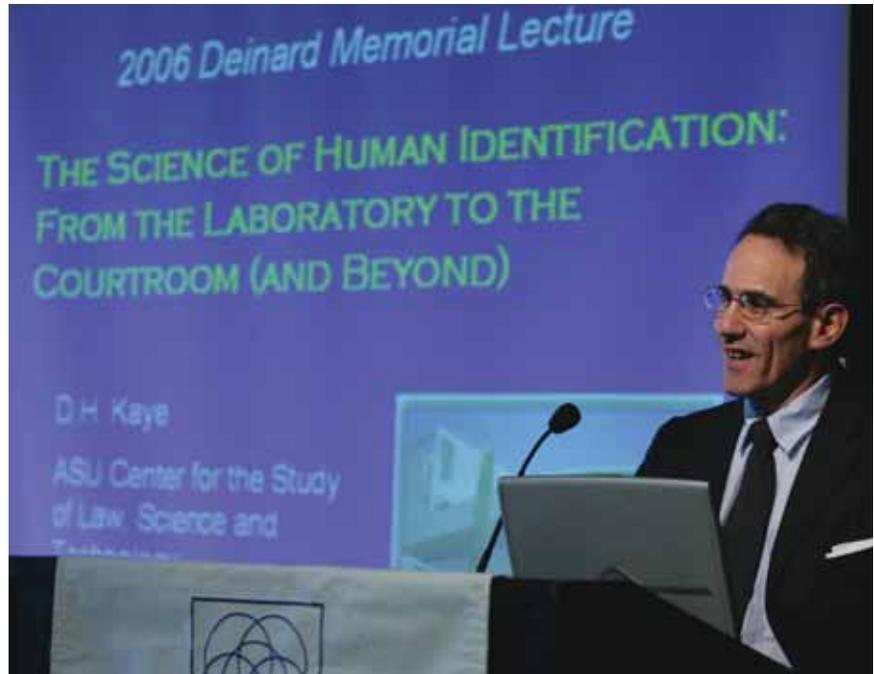


Gifts to Deinard Memorial Lecture Series Help Legal Scholarship Keep Pace with Scientific Advances

FINGERPRINTS, DNA, AND other telltale biological signs of identity have been starring in courtrooms for years, and the electrifying pace of technological advances in genetics seems certain to deliver new scientific tests and tools into criminal legal proceedings. At the 2006 Deinard Memorial Lecture on Law and Medicine, held in January, Arizona State University Professor David H. Kaye, JD, MA, discussed the social, ethical, and constitutional implications of such probable advances in “The Science of Human Identification: From the Laboratory to the Courtroom.” Commentary on the lecture was delivered by Professor Barbara Koenig of the Mayo College of Medicine and the University of Minnesota Center for Bioethics and by Professor William Iacono of the University of Minnesota Department of Psychology.

The Deinard Memorial Lecture Series on Law and Medicine received two gifts this year that will allow it to be offered annually. Twin Cities-based Leonard, Street and Deinard contributed \$25,000 to increase the endowment, as did Amos S. Deinard, Jr., MD, MPH, associate professor in the Medical School’s Department of Pediatrics, and his sister, Miriam Kelen. The purpose of the series, cosponsored by the Joint Degree Program in Law, Health & the Life Sciences (www.jointdegree.umn.edu) and the Center for Bioethics (www.bioethics.umn.edu), is to present educational programs on law, medicine, public health, and biomedical ethics. Videos of past lectures are available at www.jointdegree.umn.edu/conferences/deinard_series.php.

The Deinard Memorial Lecture Series Law and Medicine was created through a generous donation from the family of Amos S. Deinard, Sr., ’21, in honor of him and his brother, Benedict S. Deinard, ’21, who were founding partners of the law firm of Leonard, Street and Deinard. Both attended the University of Minnesota Law School and Harvard Law School. Leonard,



Professor David Kaye, a leading expert on scientific evidence and statistical methods in law, delivers the 2006 Deinard Memorial Lecture on Law & Medicine. He drew on the history lessons from DNA typing and fingerprinting to propose how the process of migrating new biotechnologies and related tests from the lab to the courtroom might be improved. He also speculated on the future of the rapidly growing DNA databases for criminal investigations and the implications of genetic-identification technologies for personal privacy.



Professor Amos S. Deinard, Jr.; Miriam Kelen; Professor David Kaye; and Byron Starns, Esq., chair of the Leonard, Street and Deinard litigation practice group.

Street and Deinard supports the Law School in numerous ways. Past major gifts from the firm include the Leonard, Street and Deinard Scholarship, established in 1969; a major gift to Campaign Minnesota,

which supported the creation of the Law School’s wireless network; and the Leonard, Street and Deinard Foundation Scholarship, established in 2001. ●

By Scotty Mann, assistant director of Alumni Relations and Annual Giving.

Improving Your Game—Negotiation and Drafting

Transactional Lawyering Skills Institute 2006

14–16 AUGUST • 18 CLE CREDITS (APPLIED FOR)



Advanced Deal-Making for Transactional Lawyers

G. Richard Shell, JD
14–15 August (Monday–Tuesday)



This two-day interactive workshop emphasizes the real-world negotiation challenges that lawyers and in-house counsel face everyday. Drawing on the latest research and best practices, Professor Shell goes far beyond simplistic formulas like "win-win" and "win-lose." Instead, he provides hard-hitting, practical, and actionable techniques, with participants practicing in challenging, business-oriented simulations.

LEARNING OBJECTIVES

- Gain confidence in managing even the toughest negotiations
- Build relationships without making concessions
- Identify more sources of leverage and use it more skillfully
- Assess personality variables more accurately
- Neutralize difficult people
- Negotiate more effectively on teams and in your firm
- Handle cultural and gender-based issues with grace and skill
- Manage client expectations to promote success

Transactional Drafting in Plain English

Wayne Schiess, JD
16 August (Wednesday)



Many studies have shown that plain English conveys a message in the shortest time possible. If clients understand your document, you spend less time explaining it and more time strengthening client relationships and succeeding where the competition fails. By adopting contemporary language guidelines you can boost your efficiency in every aspect of your practice.

LEARNING OBJECTIVES

- Eliminate legalese, jargon, and hyperformality
- Spot errors and use words of authority correctly
- Choose effective sentence length and density
- Avoid ambiguities and pitfalls in writing
- Understand how plain English improves transactional drafting
- Get answers to your drafting questions
- Reference excellent sources on legal drafting

Questions: 612-624-5779 or alton003@umn.edu or www.kommerstad.org/institute

REGISTRATION FORM • TRANSACTIONAL LAWYERING SKILLS INSTITUTE 2006 • 14–16 AUGUST • \$2,595

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Your reservation will be confirmed upon receipt of payment.

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- Fax: 612-625-2260
- Mail: Center for Business Law, University of Minnesota Law School, 229 19th Avenue South, Minneapolis, MN 55455

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Advanced Deal-Making for Transactional Lawyers

Professor G. Richard Shell, JD
Wharton School of Business, University of Pennsylvania

MONDAY, 14 AUGUST 2006

8:30-9:00: Registration & Continental Breakfast

9:00-12:30: **Foundations of the Bargaining Process**—Examine the basic structure of the bargaining process, goal setting, issue specification, openings, concession making, closing and commitment. Use Professor Shell's Bargaining Styles Assessment Tool to look closely at your style preferences.

12:30-1:30: Luncheon on site

1:30-4:00: **Deal Dynamics—Interests & Leverage**—Deals are dynamic events. Opportunities for deal structures and advantageous outcomes often present themselves in the middle of the negotiation. Such opportunities often arise from astute reading of two key bargaining variables: interests and leverage. Probe these concepts and see how an understanding of interests and attention to leverage can make huge differences in negotiation outcomes.

4:00-5:15: **Ethics in Negotiation**—The confident negotiator has a clear ethical code that governs his or her conduct at the table. There are the formal rules lawyers must follow, but also the implicit code that comes from experience, expectations, and beliefs about what negotiation is all about. Examine your implicit code as well as the constraints imposed by rule.

Homework: Read the cases for Tuesday's sessions

TUESDAY, 15 AUGUST 2006

8:00-8:30: Continental Breakfast

8:30-8:45: Re-cap of Monday's sessions

8:45-11:15: **Uncovering the Real Issues**—Further explore underlying interests as a negotiation variable—the issues, problems, hopes, and fears that bring the parties to the table. Your ability to discover the real problems and opportunities in a negotiation is a measure of your professional skill.

11:15-11:30: Break

11:30-12:30: **Working lunch on site**—Bargaining teams composed of two or three participants will prepare a complex, multi-issue acquisition negotiation.

12:45-4:00: **Complex Negotiations, Term Sheets, & Tradeoffs**—Teams of 2 or 3 members will negotiate the acquisition of a family-owned, regional airline by a larger national carrier. There are many issues, calling for organizational and team skills as well as time management. A debrief of the case and each team's performance follows the negotiation.

4:00-4:30: **Workshop Wrap-Up & Conclusions**

4:30-5:30: Certificate presentations and participant reception sponsored by Fredrikson & Byron, P.A.

G. Richard Shell is Thomas Gerrity Professor in the Legal Studies and Management Departments at the Wharton School of the University of Pennsylvania, where he has taught since 1986. He is the Academic Director for Wharton's Executive Negotiation Workshop. He has trained some of the top dealmakers in the world—from CEOs of high-tech companies to the legal departments at such firms as General Electric and Johnson & Johnson.

Transactional Drafting in Plain English

Wayne Schiess, JD
University of Texas School of Law

WEDNESDAY, 16 AUGUST, 2006

8:30-9:00: Continental Breakfast

9:00-9:30: **The Foundations of a Professional Drafter**—Know your sources, keep up on the field of drafting, and pursue ongoing training. Understand the very best and most current writing and thinking on transactional drafting.

9:30-10:00: **Forms**—We have to use them, but they present risks and pitfalls for the lazy and the unwary. Get informed so you can use forms effectively.

10:00-10:45: **Words of Authority**—Often the most crucial words in any legal document are also the most frequently abused. "Shall" vs. "must"? "Agrees to" vs. "will"? An informed and consistent approach to words of authority will set you apart from the ordinary drafter.

10:45-11:00: Break

11:00-12:00: **Legalese, Jargon, Archaisms, Hyperformality, & Other Quirks of Word Usage in Legal Drafting**—Construct a list of the most outdated, pointless, and downright ridiculous words and phrases that still find their way into modern transactional documents. Learn how to decide if you can cut a word or phrase or if it is a term of art.

12:00-12:30: **Sentence Length & Density**—How long is too long for a sentence in a transactional document? And what is a good average sentence length? Must all the qualifications to an idea be in the same sentence as the idea? Answer those questions and critique a drafted sentence.

12:30- 1:30: Luncheon on site

1:30-2:00: **Myths**—Two myths pervade transactional drafting: ambiguity and precision. If you can understand and get reconciled to them you will be a better drafter.

2:00-2:30: **Answers to Questions**—This is where the real world of transactional practice, with its deadlines, demands, and practicalities meets the pretty theories of clarity, precision, and plain English.

2:30-3:30: **The Plain English Movement**—What is it, when can you use it, when should you avoid it? Plain English is a complex and expanding subject that is beginning to affect more and more legal writing.

3:30-3:45: Break

3:45-4:15: **Document Design**—Lawyers have never been proficient at designing text and laying out readable documents. Gather some modern sources and basic principles of document design to use in your practice right now.

4:15-4:45: **Exercises**—Solve these drafting conundrums that raise questions about the canons of construction, about common errors in legal drafting, and about the extent to which you can "plainify" tradition legal drafting.

4:45-5:00: **Wrap-Up & Last Chance Questions**

Wayne Schiess, JD, is Director of Legal Writing at the University of Texas School of Law, where he has taught since 1992. He teaches legal writing, legal drafting, and plain English and is also a frequent and favorite seminar speaker on those subjects. He is also an associate editor for the Scribes Journal of Legal Writing.

Questions: 612-624-5779 or alton003@umn.edu or more information at: www.kommerstad.org/institute

REGISTRATION FORM • TRANSACTIONAL LAWYERING SKILLS INSTITUTE 2006 • 14-16 AUGUST • \$2,595

Details:

1. The Institute will be held at the University of Minnesota Law School. Parking will be free in the lot adjacent to the building.
2. Morning beverages and lunch will be provided for participants. A reception will be held on 15 August after the workshop.
3. If you have a disability and need accommodations to attend this Institute contact Disability Services at 612-626-1333 (v/tty) or ds@umn.edu at least two weeks before the event.

Policies:

1. Tape or video recording is prohibited. All rights are reserved by the University of Minnesota Law School.
2. Refunds, minus a \$75 processing charge, will be made if WRITTEN notice of cancellation is received no later than 14 July 2006.
3. Two individuals from the same firm may divide participation in the Institute. One person may attend the two-day workshop and a different person may attend the one-day workshop on one three-day registration. Be sure to provide both names with appropriate workshop.

Questions: 612-624-5779
(alton003@umn.edu)

Center for Business Law
University of Minnesota Law School
229 19th Avenue South
Minneapolis, Minnesota 55455

Moot Court Report

Students take honors in intercollegiate faceoffs; the Law School hosts national Civil Rights competition

SOMEWHERE BETWEEN adopting the mantle “1L” and accepting the final mission of the bar exam, many law students take on the rite of passage of Moot Court. Although the verdicts of the court don’t carry much legal weight, there are important career lessons to be learned and academic accolades to be earned. In 2005–06, Law School students participated in nearly a dozen intercollegiate moot court competitions around the country, while the school hosted the 21st Annual William E. McGee National Civil Rights Moot Court Competition here at home.

National Moot Court

UNDEFEATED REGIONAL CHAMPIONS,
NATIONAL FINAL SIXTEEN

The Law School’s National Moot Court Competition teams had another stellar year. The Law School fielded two teams for regional competition. The Petitioner team consisted of 3Ls Caren Martin, Tom Sinas, and Jamie Wiemer, while the Respondent team consisted of 3Ls Kathryn Hoffman, Nick Hydukovich, and Nathan Marcusen. The Respondent team was undefeated and won the regional championship. Hoffman won the American College of Trial Lawyers bowl for the best oral argument in the championship round. In the national final rounds, the Respondent team advanced to the national final 16. This was the fourth straight year (as well as the fifth of the past seven, and the seventh of the past 10) that a team representing the Law School has advanced to the national finals. The teams were coached by Clinical Professor Brad Clary, ’75, and adjunct coadvisor Kristin Sankovitz, ’99.

ABA Moot Court

UNDEFEATED REGIONAL CHAMPIONS,
NATIONAL COMPETITORS

The Law School fielded two teams that competed in the New York Regional rounds of the National Appellate Advocacy Competition. The four students were 3Ls Laura Witt and Erin Blower and 2Ls Alex Hontos and Luke Francis. The Hontos–Francis

team was undefeated in the Regional, and advanced to the national finals in Chicago in April. That team’s brief was the runnerup for regional best brief, and Francis was named the Region’s fourth-best oral advocate. The teams were coached by adjunct advisor Michael Vanselow, ’83.

National Environmental Law Moot Court

NATIONAL QUARTERFINALISTS

The Law School fielded a team in the Environmental Moot Court Competition held at Pace Law School in White Plains, N.Y. The three students were 3Ls Patrick Hynes and Andrew Pierce and 2L Beth Stack. The team advanced to the quarterfinal round. The team was coached by adjunct advisor Elizabeth Schmiesing.



Intellectual Property Moot Court

REGIONAL RUNNER-UP, NATIONAL COMPETITOR

For the third consecutive year, the Intellectual Property Moot Court competition team was successful. The team of 3Ls Charles Frohman and Angela Ni finished second in the Giles S. Rich Northeast Regional Competition in Boston. Ni was named Best Oral Advocate for achieving the highest first-round score. In April, the team competed in the National Competition in Washington, D.C. Will Schultz and Rachel Zimmerman, with help from Rachel Hughey, '03, coached the team.

International Moot Court

REGIONAL, FIFTH PLACE

3L Lesli Rawles and 2Ls Katrina Hammell, Joseph Kosmalski, Matt Povolny, and Rosalie Strommen com-

peted in the Phillip C. Jessup International Law Moot Court Regional Competition in Chicago. The team made an impressive showing, finishing fifth overall. Adjunct advisor Betsy Hoiium, '95, coached the team.

ABA Negotiation Competition

REGIONAL FINAL ROUNDS COMPETITORS

3Ls Mark Abbott and Nena Street and 2Ls Anna Pia Nicolas and Dean Parker represented the Legal Negotiation Society at this year's regional rounds of the ABA Negotiation Competition. The Nicolas-Parker team advanced to the regional final rounds in the Law School's first year of participation. The team was advised by Mary Alton, pro-



Professor Brad Clary, '75; with National Moot Court Respondant team members Nathan J. Marcusen, '06; Kathryn Hoffman, '06; and Nicholas Hydukovich, '06; and adjunct coadvisor Kristen Sankovitz, '99.

gram director of the Law School's Multi-Profession Business Law Clinic.

Wagner Moot Court Competition

NATIONAL COMPETITORS

3Ls Christy Han, Bryan Lazarski, and John Thames represented the Law School at the 30th Annual Robert F.

Law School Hosts National Civil Rights Moot Court Competition

The 21st Annual William E. McGee National Civil Rights Moot Court Competition was held March 2–4, 2006, at the Law School. Thirty-six teams from law schools across the nation submitted briefs and then traveled to the Law School to argue *Johnson v. Governor of State of Florida*, 405 F.3d 1214 (11th Cir. 2005), a Florida class action that asserted that the state's constitutional provision that denies ex-felons the right to vote violates the 14th Amendment of the U.S. Constitution and §2 of the Voting Rights Act.

Chief Judge Edward Toussaint, Jr., Judge Natalie E. Hudson, '82, Judge Bruce Willis of the Minnesota Court of Appeals, Hennepin County (Minn.) District Court Judge Lloyd Zimmerman, and Ramsey County (Minn.) District Court Judge John Van de North presided over the final argument in Lockhart Hall. Winners included:

- **Brooklyn Law School**, first place
- **Stetson University College of Law**, second place
- **The DePaul University College of Law**, third place
- **Chicago Kent College of Law–Team 1**, fourth place
- **Southern Illinois University School of Law–Team 2**, Best Brief honors
- **Michael Bell of Brooklyn Law School**, Best Oral Advocate Overall honors
- **Tina Brown** of the University of North Carolina at

Chapel Hill School of Law–Team 1, Best Oral Advocate of the Preliminary Rounds award; **Brock Specht** of the University of St. Thomas School of Law–Team 2, honorable mention

- Southern Illinois University School of Law–Team 2, University of Connecticut School of Law, University of St. Thomas School of Law–Team 2, and Chicago Kent College of Law–Team 2 advanced to the quarter-finals
- Georgetown University Law Center, New York Law School, Hamline University School of Law–Team 2, University of St. Thomas School of Law–Team 1, William Mitchell College of Law–Team 2, Seton Hall School of Law–Team 2, University of South Dakota Law School–Team 2, and Campbell University School of Law–Team 1 advanced to the Round of 16.

Members of the bar and bench, numbering nearly 170, judged briefs and oral arguments. Prior to the competition, on January 28, the Civil Rights Moot Court offered the volunteer judges the free Continuing Legal Education program, "Silenced Voices: The Constitutionality and Legality of Felon Disenfranchisement Provisions." At the conference, Professor Christopher Uggen, associate chair, University of Minnesota Department of Sociology, addressed the topic "Felon Disenfranchisement and Democracy," which was followed by a panel discussion concerning the legal, constitutional, societal, and policy-making implications of felon disenfranchisement provi-

Wagner National Labor and Employment Law Moot Court Competition held at the New York Law School. Adjunct advisor Leslie Watson, '99, coached the team.

ACTL National Trial Competition

REGIONAL COMPETITORS

3Ls Shannon Harmon and Eric Steinhoff competed in the regional rounds of the National Trial Competition, sponsored by the American College of Trial Lawyers and the Texas Young Lawyers Association. The team was assisted by Richard Gill, '71, and by Cindy Hanneken, '03.

ATLA National Student Trial Advocacy Competition

REGIONAL COMPETITORS

3Ls Lisa Hird Chung, Kristine Kerig,

Milind Shah, and Jody Ward competed in the regional rounds of the National Student Trial Advocacy Competition, sponsored by the American Trial Lawyers Association. The team narrowly missed qualifying for the regional final four. The team was assisted by Professor Brad Clary, and by David Koob, '98.

Evans Constitutional Law Moot Court Competition

OCTO-FINAL COMPETITORS

3L students Leon Beasley, Holly Hartung, and Rebecca Wilson competed in the Evan A. Evans Constitutional Law Moot Court, held at the University of Wisconsin in April. One team advanced from the preliminary round to the octofinals. The brief written by Rebecca Wilson and Leon Beasley won runnerup for Best Practitioner's Brief. The teams were

coached by adjunct faculty advisor Suzanne Senecal-Hill and Bev Butler.

Maynard Pirsig Moot Court

In the Law School's own Maynard Pirsig Moot Court Competition, 2L Trevor Helmers argued as respondent in the final championship round and won the Harold Will Cox oral argument prize. Arguing as appellant in the final championship round, 2L Matt Johnson took second place in oral arguments. Top Best Brief honors and the Dorothy O. Lareau Award went to 2L Nathan LaCoursiere, and 2L John Kokkinen claimed second place in the Best Brief competition. ●

By Professor Brad Clary, Class of 1975.

sions. The panel included Catherine Weiss, associate counsel, Brennan Center for Justice at New York University School of Law; Art Eisenberg, litigation director of the New York Civil Liberties Union; Keith Ellison, '90, of the Minnesota House of Representatives; Gary Dickey, Jr., general counsel and policy advisor to Governor Tom Vilsack of Iowa; and Marc Mauer, executive director, Sentencing Project of Washington, D.C. Following the panel discussion, Weiss spoke concerning the standards and appropriate method of analyzing the 14th Amendment and Voting Rights Act issues in the Johnson case, and Mr. Mauer talked about the racial disparity in incarceration.

For more information about the McGee competition and additional 2005 highlights, including top 10 briefs and best oral advocate lists, visit www.law.umn.edu/mootcourt/index.htm.

By Professor Carl Warren, Class of 1975.



Meaghan Atkinson and Michael David Bell of First Place Brooklyn Law School and Laurie-Ann Sharpe and James McTyler of Second Place Stetson University College of Law flank members of the McGee National Civil Rights Moot Court Competition final panel: Chief Judge Edward Toussaint, Jr., of the Minnesota Court of Appeals; Hennepin County District Court Judge Lloyd Zimmerman; Judge Natalie E. Hudson, '82; and Judge Bruce Willis of the Minnesota Court of Appeals; and Ramsey County District Court Judge John Van de North. Michael Bell of Brooklyn Law School also won Best Oral Advocate Overall honors.



The 2005–06 McGee National Civil Rights Moot Court Administration team, from left to right, Administrative Directors Misha Wright, '06, Jody Ward, '06, and Shaela Cruz, '06, and Research Assistant Anna Pia Nicolas, '07.

Faculty, Alumnae Present Tribal Court Management Program

AN ANCIENT LUMBEE TRIBE teaching—“Seek wisdom, not knowledge/Knowledge is of the past/Wisdom is of the future”—provides the essence of a Tribal Courtroom and Trial Management course recently presented by Professor Steve Simon and Minnesota Native American attorneys Heidi A. Drobnick and Tammy J. Swanson, both Class of 1991 Law School alumnae. The course was presented at the Essential Skills for Tribal Court Judges, a weeklong annual program held at the National Judicial College at the University of Nevada in Reno, Nev.

The Tribal Court Courtroom Management course is a simulation-based teaching course where attorneys experienced in practicing in tribal courts raise a variety of trial management and courtroom dynamics issues. Student judges rotate on and off the bench during the simulation. After the simulation, a senior judge leads a discussion with the students about how the various judges dealt with the issues and dynamics raised, and how they could be handled differently. The students, drawing on their perspectives as judges, offer their insights and experiences in terms of what does and does not work in the courtroom.

Simulation-based learning involves the learner in a way that brings the complex real world of the courtroom into the classroom, and allows a closer approximation of the complexity and variety of issues and dynamics that often occur simultaneously in real courtrooms. Simulation-based learning strives for wisdom, insight, and skill development.



Minnesota Native American attorneys Heidi A. Drobnick and Tammy J. Swanson, both class of 1991 Law School alumnae.

Drobnick and Swanson initially designed this program with Professor Simon for Minnesota Tribal Court judges. Professor Simon’s Judicial Trial Skills Training Program was the starting point for the development of courtroom management training programs for tribal court judges. Tribal Courts are complex entities that involve dynamics not experienced in state courts. These include the determination and application of tribal custom to legal disputes, the role of elders in court, the choice of laws between tribal law and foreign state and tribal statutes and case decisions, the use of tribal language as the language of the tribal court, and the extent of nonlaw-trained advocates and judges in tribal courts. Tribes around

the country are continually expanding and developing their courts, with the adoption of tribal codes of law, rules of civil and criminal procedure, and evidence and the development of tribal court case precedents through the tribal appellate courts.

The Tribal Court Courtroom Management course—which is steeped in the Native American proverb “Tell me and I will forget./Show me, and I may not remember./Involve me, and I will understand”—speaks to the Law School’s commitment to judicial education and reflects its leadership in the development of innovative educational programs for state and tribal court judges. ●

By Professor Stephen Simon, Class of 1971.

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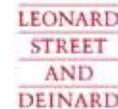
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forward Momentum

REFLECTIONS ON THE LEGACY OF DEAN ALEX M. JOHNSON, JR.



BY LESLIE WATSON

WITH HIS APRIL 14 ANNOUNCEMENT that he would be stepping down as the ninth dean of the Law School, Alex M. Johnson, Jr., ended a four-year deanship that was marked by a wealth of accomplishments. Johnson, who joined the Law School in 2002, will move to emeritus status for the 2006–07 school year, during which he will be on sabbatical. Professor Fred Morrison and Professor Guy-Uriel Charles will serve as Interim Co-Deans during the search for a successor.

Johnson's lasting legacy seems assured, thanks to his tireless work to secure the Law School's position in the top echelon of public law schools. Morrison, who has seen five deans during his decades at the Law School, offers a long-term perspective of Johnson's time at the helm: "The Dean's tenure was actually longer than that of the average law school dean in the United States, which is now three years," Morrison says. "His deanship coincided with a time

of great change for the Law School, with many faculty retirements and administrative restructuring." Under Johnson's forward-thinking leadership, the Law School saw unprecedented growth, with an influx of talented new faculty lending depth to its existing programs and expanding its capacity in key areas. Johnson also guided recruitment efforts that led the Law School to welcome an ever more capable group of students, with diverse backgrounds that reflect the complex world in which they will practice.

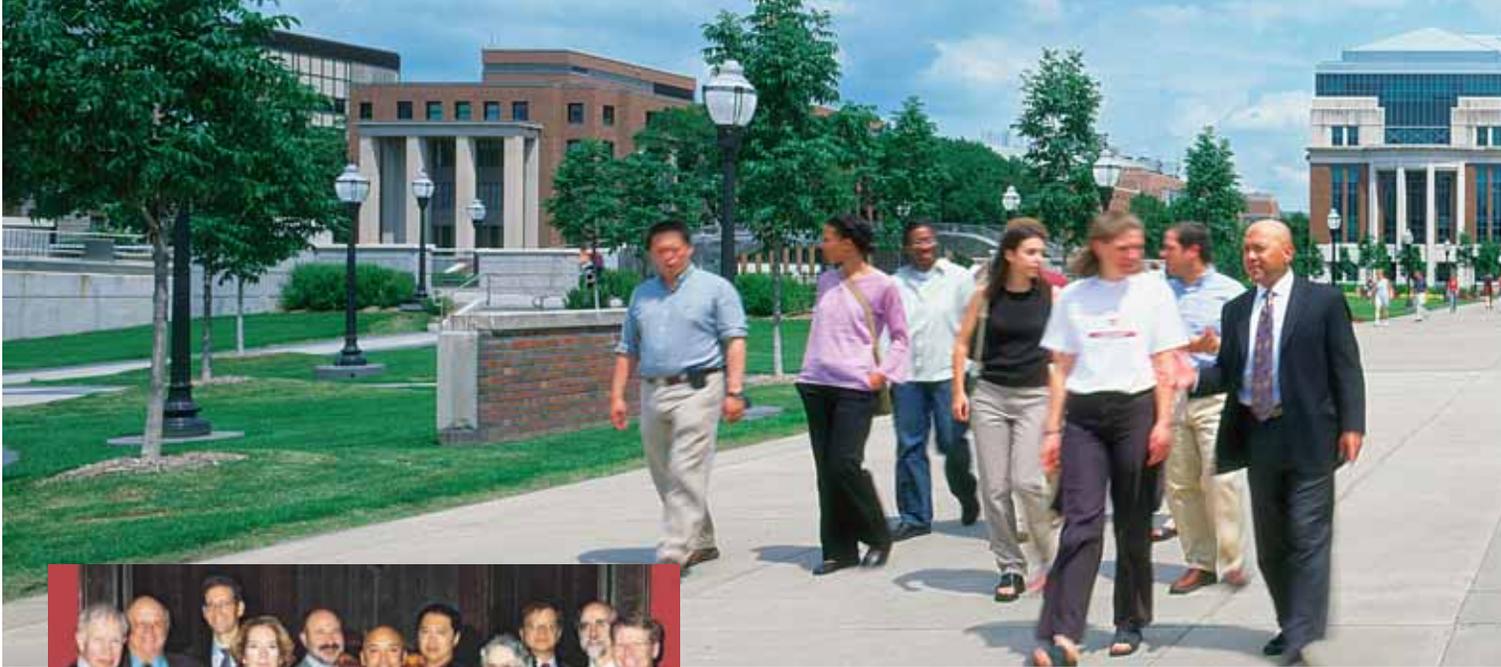


A Great Faculty, Made Even Better

Among the distinguishing characteristics of Johnson's deanship was his success at building academic excellence among the Law School's faculty. As Charles puts it, "Dean Johnson has done an absolutely remarkable job in the last four years with improving and increasing the faculty, in a way that has been tremendously exciting for the entire school."

Johnson made more lateral hires than the Law School has seen in a decade, including a number of leading scholars, and with particular focus on criminal law, environmental law, intellectual property, and international law. The addition of these members to the existing roster of talented faculty means that the Law School now boasts one of the best faculty/student ratios in the country and has secured its position as a leader in several significant areas of law. "Dean Johnson's focus on key centers of excellence where the Law School would be well-regarded nationally has proven to be a highly successful strategy for putting the institution in a strong position," observes Professor Ruth Okediji, an authority on international intellectual property law who joined the faculty in 2002.





Professor Brad Karkkainen, a nationally prominent scholar in environmental law, is among the new faculty members who joined the Law School during Johnson's tenure. "Dean Johnson recruited me very aggressively and persistently," Karkkainen says. "He made it clear I would have a true intellectual home at Minnesota, and that he would do everything in his power to help build a first-class environmental law program here as part of a broader strategy to strengthen the faculty and strengthen the student body. And he's delivered on everything he promised."

According to Charles, the wave of faculty additions has not gone unnoticed outside the Law School. "The dean brought so many talented people, with national and international reputations, that their arrival has generated national attention to the Law School and the great strides it has made in strengthening its faculty," he says. "Due to his efforts, we now have one of the best criminal law faculties in the country; we have one of the best corporate faculties in the country; we have one of the best IP faculties in the country; and we have one of the best public law faculties in the country. It's been absolutely amazing. And, perhaps equally important, Dean Johnson has also helped to establish relationships between these new people and the faculty already here, creating new synergies and fostering a vibrant intellectual community."

Johnson implemented the popular "Square Table" program last summer, which brings the faculty together on a weekly basis to share ideas in an informal setting; faculty are often very focused on their research—work that is generally done independently—and the program provided the faculty with an opportunity to work collaboratively and to benefit from sharing their work.

The arrival of these talented scholars has brought an infusion of energy to the existing curriculum. The Law School expanded its business law program under Johnson, through the lateral hires of Professors Claire Hill and Richard Painter, and through new developments at the Kommerstad Center for Business Law and Entrepreneurship. The Center now offers a corporate externship program that secures in-house positions for students with companies such as 3M, Allina, Land O'Lakes, Medtronic, and Piper Jaffray.

To leverage other outstanding strengths, the Law School created three student concentrations in Health Law, Employment and Labor Law, and International Law. Under Johnson's leadership the Law School's Health Law program subsequently rose to the top ten in the country in *U.S. News & World Report's* recent rankings. The Law School added new institutes and centers under Johnson, including the Institute on Crime & Public Policy. Johnson also helped to strengthen the school's interdisciplinary footprint by bolstering its joint-degree programs.



Widening the Field, Narrowing the Gate

Another signature element of Johnson's leadership was his commitment to diversity. In charting the Law School's course in this arena, Johnson brought to bear his own experience as the first African American dean not only of this Law School, but of any top 20 law school. "In so many respects, Johnson has been an inspiration to the entire legal community, and especially to scholars of color," says Okediji. "Having his career as a role model is something that many, many scholars of color take seriously and find greatly encouraging."

From the beginning of his deanship, Dean Johnson was committed to bringing in students from all kinds of backgrounds, both ethnic and experiential. This year's graduating class reflected these efforts, and included students with a range of previous life experiences, from a former professional NFL player to individuals with established public service careers. Johnson's efforts to attract a diverse



student body have benefited everyone at the institution. “The diversity in the Law School’s student body has made for a rich and stimulating classroom environment,” Okediji says. “Students with diverse backgrounds bring a maturity of perspective and a passion for the law that helps traditional students appreciate the kind of environment in which the law must operate, and better prepares everyone for the reality of what life and career can bring.”

Under Johnson, the student body became not only more diverse, but also more academically elite. In 2005, the

entering class had a median GPA of 3.54 and a median LSAT score of 164, the strongest statistical showing that the Law School has seen. The Law School broke its record for applicants in 2005, and again in 2006–2007, a fact that is doubly significant given the national trend of declining applications. As Charles points out, the caliber of the student body profits the entire institution, including the faculty. “It is quite frankly a joy, as a law professor, to be teaching these wonderful students,” he says. Karkkainen agrees, and believes that Johnson deserves a great deal of credit. “He made it a top priority to expand our applicant pool by aggressively promoting our excellence, and that has allowed us to be more selective in our admissions,” observes Karkkainen. “Having top students makes it easier to recruit and retain top faculty, which in turn makes us even more attractive to the next year’s applicant pool. It becomes a self-reinforcing cycle of excellence.”



Building a Law School Community

Even in the midst of concentrated efforts to build upon academic strengths, Johnson did not neglect the Law School’s sense of community. He was an enthusiastic proponent and supporter of the production by the Theater of the Relatively Talentless (TORT), an all-student musical parody that now draws an audience of more than 1,000 and has become an annual tradition. “The production is a really wonderful way of bringing the law school together as a community, and it’s become something that both faculty and students look forward to every year,” Okediji says. “Not only does it showcase



the life that our students live outside of the Law School and the remarkable gifts that they have, but it's tremendously fun."

Johnson also initiated new ways for the Law School community to come together for the benefit of its own members, such as the annual race for Justice 5K Fun Run/Walk to raise money for the Loan Repayment Assistance Program. The Race was one part of the dean's support for the Public Interest Law Students' Association; Johnson was instrumental in providing financial support and increased public awareness for the group.

In addition to the demands of managing the Law School, Johnson made time to return to the classroom each spring, teaching both first-year and upper-level courses. This made him accessible to students, who came to know him more personally than they might otherwise have done. "He was also a great mentor to both young and mid-level faculty," Okediji says. "For junior faculty in particular, the dean's direct and unvarnished opinions were tremendously helpful for building skills and confidence, and finding new ways to develop professionally."



A Well-Kept House, on a Road Well Paved

Beyond Johnson's more glamorous successes in attracting topnotch faculty and students, he also performed unsung work that played an equally critical part in enhancing the Law School's capacity as it moves forward in the 21st century. "Perhaps some of Dean Johnson's greatest strengths were on the administrative side," notes Morrison, "which allowed him to help the institution adapt to the many changes it has seen over the last several years."

Johnson increased staff support in all areas of the Law School, including the Career and Professional Development Center, which provides education, training, and opportunities to students and alumni. He expanded annual fund and alumni relations work, and elevated the Law School's public image by adding a new communications position. His efforts paid off almost immediately, with the Law School winning the 2006 University of Minnesota Communicators Forum Gold Award for best print publication. Johnson also led efforts to keep the Law School abreast of cutting-edge technology, instituting a program designed to equip every student with a laptop computer while in school.

The Law School achieved other significant milestones during Johnson's deanship:

- The Law Library, the eighth largest in the country, acquired its millionth volume, the *Papers of Clarence Darrow*.
- The Law School developed strong ties to China, and this year launched its summer study abroad program in Beijing.



- The Law School maintained its rank of 19th in the country (in *U.S. News & World Report*), a significant accomplishment given the ongoing pressures on public schools created by funding cuts.
- Johnson helped to secure several significant donations for the Law School, including a generous gift of \$1 million from the law firm of Robins, Kaplan, Miller & Ciresi.

From the standpoint of the bright future that he helped to secure, Johnson's tenure will undoubtedly be remembered for his forward-looking, energetic commitment to propelling the Law School toward greater capacity, and correspondingly greater stature. "It's the mark of a true leader to be able to improve on the past and set a path for the future," Okediji says, "and it is this quality that Dean Johnson brought to his deanship. He helped us to identify where it is that we need be in order to position ourselves among the very top two or three public law schools in the country. Through his leadership, the Law School has gained a strong sense of where we have been, and a definitive framework for where we should be headed."

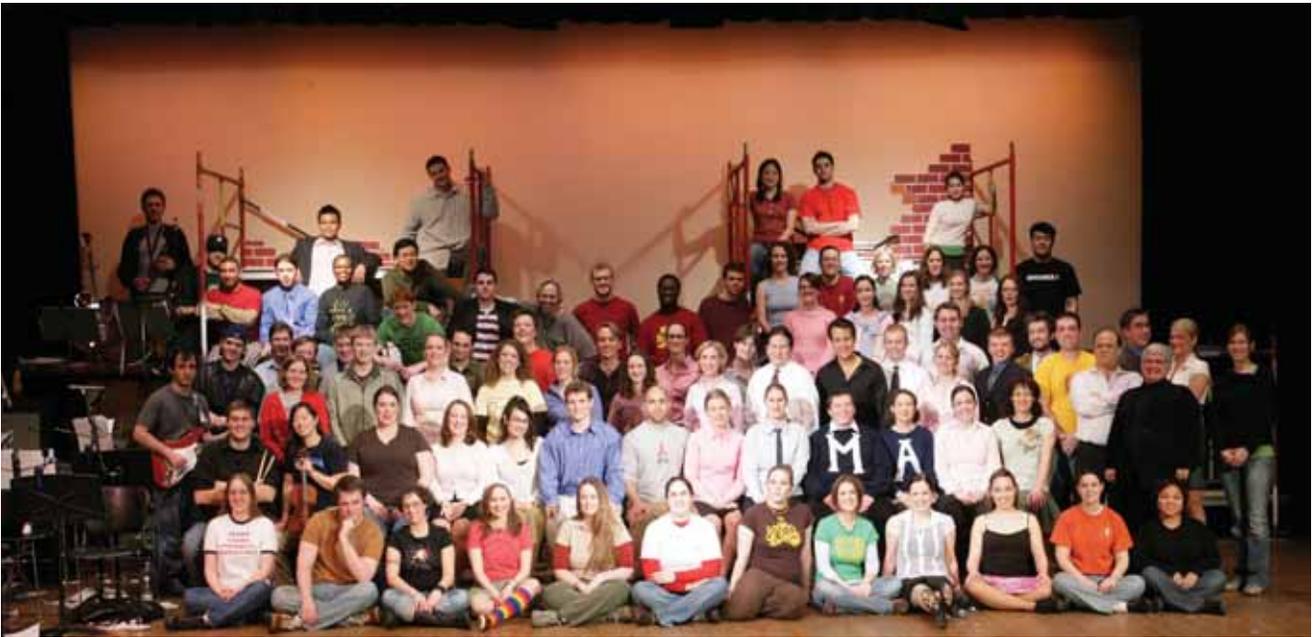
"Dean Johnson has provided us with a very strong foundation," agrees Charles. "He has had a great vision about the direction that the Law School ought to be going, and part of the role that both Interim Dean Morrison and I will play is to carry on that vision until we pass the baton to his permanent successor."

Beyond his institutional legacy, Johnson will also be warmly remembered for his personal integrity and honesty, and for the stimulating intellectual atmosphere that he cultivated. "He is a great human being, with a wonderful heart, who truly cares about people and their development," Charles says, "and it was a pleasure being a member of this faculty under his leadership." ●

Leslie A. Watson is a freelance writer and a 1999 graduate of the Law School. She can be found online at www.thebusypen.com.



STUDENT PERSPECTIVE The students at the Law School bring their real-world experience into classroom conversations; out-of-class studies and scholarship; internships and clinic projects; and also to their shockingly wide range of extracurricular activities. Based on their undergraduate seasoning, lessons learned on the job, their daily interactions within the community, and their individual cultural perspectives, our students are parsing, sifting, analyzing, and imagining just how the theory and the practice of the law meet up in contemporary society. In this section, meet three students who made their way to the Law School from paths as diverse as science and the circus. Find out how the Women's Law Student Association has evolved from a mission of helping with child care to one of total career enhancement. Get the story on why the Briggs and Morgan Scholarship is better than ever, and read what legal insights students generated after examining the catastrophe of Hurricane Katrina.



TORT Show Sings and Dances to Sell-Out

The Theatre of the Relatively Talentless (TORT) is a theatrical musical parody of the law school experience. Each year, Law School students write, direct, and perform an original, full-length musical, abandoning their normally reserved demeanors as they showcase hidden talents in humor, song, and dance. Past productions include *The Wizard of Fritz*, *Law Wars*, and last year's sold-out smash hit, *Walter Wonka and the Lawyer Factory*. This year's production, *West Bank Story*, told a tale of two star-crossed law school students caught between rival groups—the Sharks and the PILs.

Each year, more than 70 students participate in the acting, singing, and technical work for the show. Running for four performances, TORT has become a major theatrical event. *West Bank Story* held four sold-out performances at St. Paul Student Center Theatre, and drew nearly 1,300 students, faculty, and alumni. All productions featured cameo appearances from respected legal luminaries, including former Vice President Walter Mondale, '56; Attorney General Mike Hatch, '73; Eighth Circuit Chief Judge James Rosenbaum, '69; and Hennepin County Attorney Amy Klobuchar. Law School faculty and staff also participated in each show.

Several top Minneapolis-based law firms sponsored TORT to show commitment to the values of entertainment, quality of life, and humor, in addition to hard work. TORT corporate sponsors include Dorsey & Whitney LLP; Faegre & Benson LLP; Robins, Kaplan, Miller & Ciresi LLP; Gray Plant Mooty; Fredrikson & Byron PA; and Shumaker & Sieffert, PA. The firms' contribution went directly to the technical costs associated with this surprisingly high-quality theatrical production; this year, it cost \$12,000 to produce *West Bank Story*.

For more information or to support TORT, visit www.umn.edu/~tort, where you can download original cast performances and purchase DVDs of past performances. We look forward to seeing you at the show next year! ●

By Anna Pia Nicolas, Class of 2007



› Student Scholarship

As the Waters Recede: Legal Lessons from Hurricane Katrina

Wetland Restoration in the Aftermath of Katrina

BY BEN KREMENAK, CLASS OF 2007

AS FEDERAL, STATE, AND LOCAL governments plan the future of New Orleans, they must look beyond the levees for a lasting solution to the region's vulnerability to hurricanes. Aggressive investment in the restoration of the coastal wetlands in the area will reap environmental and economic benefits for years to come.

New Orleans sits on the south shore of Lake Pontchartrain, the second-largest saltwater lake in the United States (after Utah's Great Salt Lake), and in the center of the Lake Pontchartrain Basin—a watershed covering 5,000 square miles. The basin supports hundreds of species of aquatic and terrestrial wildlife, and nearly half of all North American migratory birds pass through the area each year.

The Lake Pontchartrain Basin also hosts almost 1.5 million people, one-third of Louisiana's total population. Growth pressures such as dredging, sewage disposal, saltwater intrusion, and urban and agricultural runoff have taken their toll. Twenty-eight percent of the Basin's wetlands (some 266,000 acres), as well as 75 percent of the submerged aquatic vegetation, have been lost during the past 60 years. Every 2.8 miles of vegetated wetlands can reduce a storm surge by about a foot. A wetland that equals only 15 percent of the acreage in a watershed can reduce flood peaks by 60 percent. Because New Orleans is separated from the Gulf of Mexico by 107 miles, this is quite significant.

Unfortunately, since the late 1960s, Lake Pontchartrain has been connected to the ocean by the Mississippi River Gulf Outlet (MRGO). When hurricanes strike the area, the MRGO acts as a funnel, allowing the storm surge to rush unimpeded toward New Orleans. Furthermore, the MRGO allows an excess of saltwater to infiltrate the lake. This has created a 100-square-mile dead zone in Lake Pontchartrain, the destruction of tens of thousands of acres of marshland, and a sig-

Students in the seminar "The Legal Implications of Hurricane Katrina" evaluated the policies and laws that compounded the hurricane's destruction—and how changes might help mitigate the effects of future natural disasters.

Hurricane Katrina was the most catastrophic natural disaster in U.S. history. Like many other Americans, the members of the University of Minnesota Law School responded with an outpouring of financial and emotional support. Many of our students pondered whether they might contribute their intellectual resources to the recovery effort. Responding to student interest, Associate Dean Jim Chen and former Law School Professor Daniel A. Farber (now of Boalt Hall School of Law at the University of California at Berkeley) taught a one-week intensive seminar on Hurricane Katrina and the broader topic of natural disasters and the law. The seminar addressed a broad range of issues, from pre-storm planning to emergency response and post-disaster reconstruction. The following abstracts offer a glimpse of the scholarship that Minnesota's law students have generated in response to Hurricane Katrina, in the uniform hope that America might recover from this disaster and be better prepared to withstand future catastrophes.

nificant drop in fish and oyster harvests. Today, the MRGO provides just 3 percent of southeast Louisiana's shipping commerce. Dredging costs for the MRGO are \$22 million per year, which amounts to \$12,657 per vessel per day.

Additional wetlands would provide numerous benefits. Wetland plants absorb excessive amounts of suspended nitrogen and phosphorous compounds, destroy intestinal bacteria in human and animal waste, convert inorganic nutrients to their organic forms, and facilitate photosynthesis by filtering sediment out of the water. This is especially important in the area around Lake Pontchartrain because the lake was the receptacle for the 114 billion gallons of bacteria-, oil-, and chemical-infested water pumped out of New Orleans after Katrina.

Parks for the Coast: The Cost of Preventative Zoning Post-Katrina

BY JENNIFER HANSON, CLASS OF 2006

HURRICANE KATRINA CAUSED devastation that was unprecedented in recent U.S. history. The approach to the reconstruction and redevelopment of affected areas continues to be a topic of controversy. Given what is at stake, in the near as well as long term, planners and politicians should strive to

reconstruct a coast that will be less vulnerable to future destruction by natural disasters.

Hazard mitigation has been routinely used to reduce the costs of catastrophic events in cities prone to natural disasters. The effectiveness of mitigation measures has been variable. Historically, the use of structural techniques such as coastal jetties, levees, and dams has been unsuccessful. In fact, these mitigation activities have been found to exacerbate the problems they are intended to solve, causing environmental degradation and ecological imbalance that enhances the severity of future disasters.

By contrast, the potentially more effective use of nonstructural mitigation measures such as land-use zoning, floodplain restrictions, and other noncompensatory limitations on development has been largely ignored. Despite their political unpopularity, these measures offer a more effective long-term solution to the problem by limiting population growth in hazardous areas and ensuring that natural buffer systems remain intact. Because the devastation of New Orleans offers a unique opportunity to comprehensively rezone the city, nonstructural mitigation is the natural solution to diminishing the cost of future disasters.

A comprehensive rezoning of New Orleans should be consistent with the



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designations of the updated federal flood map. Those properties at a significant risk of flooding should be rezoned to less intensive uses, such as recreational parkland. An imposition of this regulatory limitation on development will raise questions as to whether a compensable “taking” under the Fifth Amendment of the Constitution has occurred. The Supreme Court analyzed a statute barring development on coastal property in *Lucas v. South Carolina Coastal Council*. Justice Antonin Scalia, writing for the majority, found the statute eliminated all economically viable use, and therefore was a compensable taking under the Fifth Amendment. If New Orleans imposes land-use restrictions that are found to deny all economically viable use, *Lucas* analysis provides for compensation for the fair market value of the owners’ land.

In the alternative, compensation may not be required if the city chooses to allow activity that affords cognizable value. On sensitive coastland, however, New Orleans is well-advised to limit intrusive uses, and must therefore be willing to accept the initial cost of rezoning. Questions will arise as to how the market value should be determined for these devastated properties. But whatever the ultimate price tag, the potential for long-term sustainability for New Orleans makes this major investment worthwhile.

Lacking Trust and Deciding Late: Individualism in Emergency Response

BY ALLISON HALEY, CLASS OF 2006

THE GOVERNMENTAL BREAK-down associated with Hurricane Katrina begins with the federal government’s failed attempt at predisaster

mitigation. The next broken link in the chain of disaster response situates itself at the center of the National Response Plan (NRP) and the Robert T. Stafford Disaster Relief and Emergency Assistance Act (Stafford Act). The procedures designed in the NRP and the Stafford Act for government to follow in response to disastrous situations apply a waiting game and an inherent division among individual officials and individual agencies.

Like the NRP and the Stafford Act, the Constitution builds separates power between state and federal governments. Uniting these levels of government to protect lives from disasters is inherently complicated. In preparing for and responding to disasters, governments at all levels need to invoke flexibility and embrace the idea of community over individual.

The federal government should be involved with state and local preventive planning by requiring approval of the state and local plans in order to fund mitigation projects. This is already in place, but on too small a scale. It had been only six years since government decided to fund mitigation projects before a disaster actually hit the area.

The main advantage to this system is that a relationship is built between the federal, state, and local agencies. Relationships comprise the core of community. If a relationship develops before a disaster hits, it would reduce friction between officials and agencies and reduce squabbling over powers as was seen during Hurricane Katrina. In turn, this would lend efficiency to decision-making. In disastrous situations, trust is imperative to speedy decision-making. Relationships build trust.

The Federal Emergency Management Agency (FEMA) worked with states to

approve predisaster mitigation programs. Since 9/11, FEMA has been reorganized three times, resulting in reduced staffing and programs. The Department of Homeland Security believes that FEMA should not be involved with predisaster mitigation and should focus solely on disaster response. However, the responders need to be the same as the mitigators or the relationship connection is lost. Government must refocus on predisaster mitigation, relationships, and community response. Otherwise, when the next disaster explodes on our horizon, the same delayed decisions and individualistic conflict will continue to cause unnecessary loss of life.

Lessons From the Kobe Earthquake

BY ALEX GESE, CLASS OF 2006

AT 5:45 IN THE MORNING OF Jan. 17, 1995, residents of Kobe, Japan, awoke to what must have seemed like a nightmare. Unfortunately, the nightmare was real. Measuring 7.2 on the Richter scale, an unexpected earthquake spent 20 seconds mutilating a city that, until that time, was most notable for its beef and for being one of the busiest port cities in the world.

The earthquake struck without warning, causing the immediate death of more than 200 people. During the next several hours, another 6,000-plus would die horrible deaths while trapped in rubble or fires. The city of 1.5 million people saw buildings destroyed in each of its nine wards. More than 300,000 people were left homeless as a result of the quake. Kobe’s transportation infrastructure was in ruins. Economic damages totaled well over \$100 billion, marking the Kobe disaster with the infamous distinction of being the costliest disaster to befall any one country in history.

A quick look at population, geographic, and industrial data reveals a striking—almost eerie—resemblance between the cities of Kobe and New Orleans. Another similarity is that both cities have had to deal with unfathomable disaster. Regrettably, each disaster exposed flaws and failures in the cities’ preparedness for inevitable catastrophes. Eleven years after that disastrous morning of Jan. 17, 1995, Kobe is once again a flourishing city. It has reestablished itself as a thriving port city, its transportation infrastructure has been rebuilt, its buildings are now both aesthetically and architecturally impressive, and its population is intact. While the earthquake was tragic, it also brought to



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bear a city's ability to deal effectively and efficiently with profound adversity and, ultimately, to rebuild in a very positive way.

Kobe and, indeed, many other cities can offer much-needed hope and guidance to New Orleans as it is faced with the task of rebuilding and, perhaps, reinventing itself. History has shown that cities have a remarkable tendency to bounce back after disaster: London after the blitz of 1940, Mexico City after the earthquake of 1985, New York City after 9/11—the list goes on. This phenomenon is commonly known as “the resilience of cities.” While disasters are never welcome, lessons from history relating to disaster recovery response and short- and long-term planning methodology should be embraced with open arms. Moreover, the phenomenon of resilience should send a welcome signal of hope to New Orleans.

Governmental Structure and Emergency Response

BY LOTE M ALMOG, CLASS OF 2007

AMONG MANY LAWYERS' attempts to lay blame for failures to prepare for and respond to Hurricane Katrina, some commentators argue that the structure of the U.S. government itself made an effective response to Hurricane Katrina impossible.

The Tenth Amendment of the Constitution reserves to states all powers not expressly granted to federal government. Among federally delegated powers, domestic disaster response authority is not one of them. Consequently, state and local governments are expected to be the first responders to disasters in their territories. For example, pursuant to Louisiana law, it is the state's responsibility to prepare for evacuation, rescue, and care before,

during, and after emergencies. The Stafford Act, which provides for federal emergency relief, calls for state and local action to precede federal intervention, making it sometimes bureaucratically difficult for the federal government to provide immediate assistance.

Blaming the drafters of the Constitution for government failures, however, would be an injustice despite the inherent challenges of operating a federalist system of government. State and local governments have a duty to prepare plans for preventing loss of life and property in case of a major hurricane—not merely responding after the fact. Nothing in the structure of American government would have prevented implementation of such pre-disaster measures.

Conversely, the federal government, specifically the executive branch, needed to initiate a more active response to Katrina. State and local governments were incapacitated and under-equipped to address the needs of the citizenry after disaster struck. Given the traditional role of the states in emergency response, a comprehensive federal response could require the stretching of the Constitution, but not its total abandonment. Despite constitutional silence on the issue, the drafters surely contemplated disasters requiring action by a unitary executive. They likely presumed that the president would exercise inherent powers under his authority to execute the laws and as commander in chief during these crises. History is rife with instances where the executive did so.

Katrina, however, exposed an executive branch that was neither unitary nor active. Among the failures, the executive branch failed to call up the military in a timely fashion, delayed establishing a disaster site multiagency coordination center, and failed to have a plan in place for assuming

rescue and evacuation duties when local government became overwhelmed. Hurricane Katrina demanded that the executive branch rise to the occasion. The temporary nature of natural disasters makes it less upsetting that constitutional balance might have shifted as a result. In light of the historical precedent for the executive's assumption of inherent powers in times of emergency, and in light of the responsibility of local governments to prepare for and respond to the foreseeable disaster, the blame belongs to these bodies alone, not the country's governmental structure.

Did the United States Have a Legal Duty to Rescue New Orleans?

BY KELLY G. LAUDON, CLASS OF 2006

HURRICANE KATRINA BATTERED a large area of the Gulf Coast region, but had a particularly devastating effect on the city of New Orleans. Due to the city's position below sea level and its dependence on an aging and inadequate levee system, Katrina's enormous swells of water forced city residents out of their homes. Hundreds of thousands had no resources with which to evacuate the city and relied on the government for emergency assistance. With local and state resources overwhelmed by the catastrophe, hurricane victims expected the federal government to provide that relief. Americans watched in disbelief as federal relief came slowly and ineffectively to a city in desperate need. In some cases, the aid came too late.

The public swiftly placed blame on federal leaders for failing the city of New Orleans. How could a country as rich in resources as the United States react so poorly to a hurricane predicted days before landfall? Moral blame may be easy enough to impose on the federal government, but legal liability is not.

The first question one faces in analyzing federal liability for the government's failure to provide adequate rescue services to New Orleans is fundamental to any cause of action: Did the United States have a duty to rescue the city of New Orleans? The answer is likely no. There are three theories of duty one might consider to hold the United States liable for failed relief efforts in New Orleans. All fail as a matter of law.

The first theory argues that a government created to protect the life and property of its citizens has an affirmative duty to do so. The United States purportedly assumed a constitutional duty to protect

citizens from harm under the due process clause of the Fifth Amendment. Supreme Court jurisprudence rejects this theory, however, by interpreting the due process clause as a statement of negative rather than positive rights. The due process clause guarantees freedom from oppression by the government, rather than governmental protection against oppression by others.

The second theory by which the law might impose liability on the federal government is the Good Samaritan doctrine. This tort doctrine imposes a duty of reasonable care on a stranger who voluntarily intervenes to rescue a person in distress. Although the Good Samaritan has no duty to rescue, once she undertakes the rescue she is liable for any increased harm her negligence might cause the distressed person. The United States arguably assumed a duty when it voluntarily designed and built a levee system to protect New Orleans from flooding. The federal government also undertook a duty to act reasonably when it induced residents of New Orleans to rely on its promise of relief before the hurricane hit. Under the Federal Tort Claims Act (FTCA), injured parties have invoked the Good Samaritan doctrine to hold the federal government liable for failed maintenance and rescue attempts. The problem in New Orleans is that Louisiana does not follow traditional common law holding a Good Samaritan liable for her negligence. Louisiana only holds rescuers liable for intentional or grossly negligent acts. Because the FTCA immunity waiver only applies to causes of action against the federal government for which state law would hold a private individual liable, an FTCA claim for negligence based on the Good Samaritan doctrine would not stand in Louisiana.

The third theory argues that Congress assumed a duty to rescue victims of major disasters by passing the Stafford Act. The Act authorizes the president to provide disaster relief when a catastrophe overwhelms state and local resources. The legislation expressly provides, however, that the federal government is not liable for its employees' negligence in carrying out a discretionary function under the Act. Given the Supreme Court's broad interpretation of the term "discretionary function," the federal government is likely immune from liability for the negligent decisions and omissions made by federal employees in response to Katrina.

Although the public continues to blame the federal government for its failed response to Hurricane Katrina and the increased harm caused by that failure,

there is likely no theory by which legal liability may be imposed. Whether one takes a constitutional, common law tort, or statutory approach, any claim against the United States would likely fail because the federal government had no legal duty to rescue the residents of New Orleans.

Price-Gouging in the Gasoline Market After Katrina

BY DAVE NARDOLILLO, CLASS OF 2007

IN THE AFTERMATH OF HURRICANE Katrina, the one economic impact of the storm that was most immediately and broadly felt throughout the country could be readily observed at the local gasoline station. The hurricane disrupted oil-drilling operations in the Gulf of Mexico for days. As one might expect, in a market with insatiable global demand for petroleum, the price correction for any kink in the production chain would be swift and severe.

Indeed, the Energy Information Agency reported that between August 29 and September 5, the period just after Katrina struck the Gulf Coast, the average U.S. price for regular gasoline rose 46 cents to \$3.07 per gallon, at that time the largest weekly hike in prices on record. Not surprisingly, that price increase was coupled by an increase in the numbers of complaints of price-gouging. Perhaps more unexpectedly, complaints emanated from places far from the region that was directly affected by Katrina. Complaints were filed in states across the country, from Vermont to Alaska, and even in foreign countries as far away as Australia. The attorneys general of a number of states, backed by statutory authority to investigate and prosecute incidents of price-gouging as well as general support from the public, took swift action. These efforts have resulted in fines to gasoline service stations throughout the country and in states far beyond the direct reach of the storm, such as New York, New Jersey, and Illinois.

Despite public approval of these campaigns against service station owners and public statements by President George W. Bush declaring "zero tolerance" for price-gouging in the wake of Hurricane Katrina, the federal government has consistently resisted calls to implement a federal law against price-gouging. The Federal Trade Commission has explicitly refused to support federal price-gouging legislation, whether related to gasoline or other products. The reasons for the lack of support have less to do with concern over the limits of federal legislative power and

have more to do with questions as to whether price-gouging laws actually work and whether such legislation has desirable impacts, despite the good intentions that lead to their passage.

Statutes that punish price-gouging have rightly arisen from society's desire to keep the most vulnerable members of society from being priced out of access to necessary items, such as food, medicine, and energy in times of crisis and to prevent individuals from unfairly profiting from the confusion, desperation, and irrationality that tends to proliferate amid disastrous events. But even those who support price-gouging statutes admit that the efficacy of such laws leaves much to be desired. Both critics and supporters of price-gouging statutes note that such laws can actually exacerbate shortages. Prices kept artificially low by statute could encourage consumption beyond an individual's needs and lead to runs on stores that can exhaust supply and leave people unable to obtain necessary supplies and resources at any price. Poorly crafted laws also can strip the incentive for store owners to stay open during a crisis, for many price-gouging statutes do not allow storeowners to charge higher prices that offset the dangers and extra costs of staying open to serve the public. The inability to pass along reasonable additional costs also discourages merchants from maintaining adequate stockpiles and reserves in advance of emergency situations, since they will not be able to recoup the additional cost of maintaining such inventories.

There also seems to be a growing sentiment that the statutes are themselves so structurally deficient as to be useless as a guide to service providers and merchants. Many statutes employ vague and subjective terms to define the threshold at which price-gouging occurs. These laws offer no markers as to what constitutes unfair pricing. Several statutes define the threshold that constitutes price-gouging as when the prices charged are "unconscionable" or when they "grossly exceed" the normal price for the product. Courts have fruitlessly attempted to define the contours of these terms for decades. The result leaves merchants with no clear sense of how the statutes operate. These laws also open the possibility of inconsistent punishments and fines.

By surveying the existing state of price-gouging laws and examining how these laws might be better crafted, we can learn how such laws can protect citizens while recognizing the real problems that merchants face when they attempt to serve their communities in times of disaster. ●

› Scholarship Spotlight

The Briggs and Morgan Scholarship

BRIGGS AND MORGAN, P.A. raises money like a well-oiled machine: Firm leadership determines a philanthropic objective and fundraising target, marshals the troops, and matches individual lawyers' donations with funds from the firm and from the Briggs and Morgan Foundation. The Law School has been the fortunate beneficiary of this effective protocol on numerous occasions. What makes that well-oiled machine work, of course, are caring, dedicated people.

Michael J. Galvin, Jr., '57, served as scholarship cochair for the Law School during Campaign Minnesota. In 1999, under Galvin's determined and efficient leadership, Briggs and Morgan and individual contributing lawyers of the firm established the **Briggs and Morgan Scholarship Fund** with a total commitment of \$250,000. The endowment is an important resource for the Law School in recruiting and retaining great law students. To date, \$30,000 in income earned on the fund has provided eleven scholarships, awarded to eight Briggs and Morgan Scholars.

In 2005, the Briggs and Morgan Foundation and individual lawyers of the firm pledged an additional \$50,000 over five years to take advantage of the current University of Minnesota President's Scholarship Match program. Income earned on the new fund,

"Of course, great students attract great faculty, and vice versa.

Alumni benefit from the continued prestige of the Law School. The legal system and countless other components of society are strengthened by the exemplary qualities of U of M lawyers."

—Richard G. Mark, Class of 1971, Briggs and Morgan president

including future gifts, will be matched dollar-for-dollar and combined with income earned on the original endowment; thus, the number and size of Briggs and Morgan Scholarships will be increased significantly.

The firm, its members, and its foundation have advanced strategic priorities of the Law School. The Briggs and Morgan Professorship in Law, endowed in 1987, created a vital means by which the Law School has been able to acknowledge and encourage two world-class faculty members. David S. Weissbrodt held the Briggs and Morgan Professorship from 1989 to 1998; its current holder, Michael Stokes Paulsen, was appointed in 1999. Briggs and Morgan and its lawyers contributed leadership support for the Stein Scholars Endowment created in 1996; initiated in honor of then-retiring Dean Robert Stein, the endowment was created to provide full-tuition scholarships.

Faculty, alumni, and especially students are grateful to Briggs and Morgan for its deep-rooted and meaningful sup-

port. The firm currently employs 56 University of Minnesota Law School graduates. Briggs and Morgan lawyers enrich the curriculum of the Law School by serving as adjunct professors, as judges and coaches of the nine moot court teams, and as panelists for numerous career-related programs. Firm members volunteer time and expertise to Law School advisory boards, organize alumni class reunions, host alumni events, and counsel prospective students. The Briggs and Morgan Scholarship is central to this dynamic alliance between the firm and the school.

As our partners at Briggs and Morgan know, scholarship giving is essential, with state funds comprising just two percent of the Law School's annual budget, and 2005–06 tuition and fees at \$21,328 for Minnesota residents and \$31,712 for nonresidents. ●

By Martha Martin, director of External Relations. If you'd like to contribute to scholarship giving, please contact Martha at (612) 625-2060 or marti168@umn.edu.



"With tuition ever on the increase, the Briggs and Morgan Scholarship has provided me with some much-needed piece of mind during law school. By worrying less about financial issues and more about academics, the scholarship has enabled me to become a better student."

—Justin Moeller, Class of 2006, Briggs and Morgan Scholar

› Student Profiles

A Bad Scientist, a Not-Geeky-Enough Computer Guy, and a Former Circus Intern Find Their Fit at the Law School

RISHI GUPTA

CLASS OF 2008

I GOT INTO LAW BECAUSE I WAS a bad scientist,” says Rishi Gupta, sipping green tea in a crowded coffee house. “But,” he adds, “I was really good at talking about it.”

And then the first-year law student jumps into a discussion of the electrodynamic qualities of carbon nanotubes. Soon his conversation is peppered with references to quantum dots and lipid bilayers. He draws diagrams on a reporter’s notebook, rolls a napkin into the shape of a tiny nanotube, and is delighted to find a roundish imperfection on our beat-up table. “This looks just like a cell,” he says.



After graduating with a bachelor’s degree in electrical engineering from the University of Texas-Austin in 2001, Gupta took a job with Zyvex,

a Dallas nanotechnology company. Many observers believe the emerging high-tech industry could result in great medical and technical advances in the decades ahead.

After a perfect score on the analytical portion of the GRE, law school seemed like a smart alternative.

At Zyvex, Gupta toyed with the S100, a robotic tool scientists hoped could manipulate nanotubes. In his first independent research project at the firm, Gupta worked with a physicist to devise a way for the four-pronged S100 to electrically probe a nanotube, causing it to buckle while measuring its conductance behavior. Due to its powerful molecular structure, the nan-

otube retained its conductivity when it returned to its original form.

“That was a big turning point,” he says. “It really guided the rest of my scientific career.”

The research, and its publication, helped him secure a National Science Foundation grant to study nanotechnology in Australia. In 2003, while still working at Zyvex, he began taking classes in applied physics at the University of Texas-Dallas.

But the physics and electrical engineering expertise didn’t help him when the company sought to find biological uses for the S100. For that, Gupta needed to hit the books. “I had to read hours and hours a day just to figure out the vernacular,” he says.

That’s where the cell-like spot on the table comes in handy. Gupta patiently notes that the S100 had to slip through the outer edge of a cell, known as the lipid bilayer. By sticking a light-emitting quantum dot on the tip of the S100’s probe, scientists could see what they were doing. “The trick is to get the quantum dot to stay on the tip,” he says.

Gupta earned his master’s degree in applied physics in May 2005, but had long since given up on a scientific research career. University professors spent too much time

trying to win grants, while scientists at private firms often had their research canceled when it didn’t match the whims of the marketplace, he believes.

After a perfect score on the analytical portion of the GRE, law school seemed like a smart alternative. He chose the University of Minnesota because of its expertise in international and intellectual property law. Gupta

hopes to merge the two into a specialty. Or maybe not.

“I don’t want to be pigeonholed into IP law,” he says. “I want to keep an open mind.”

At age 27, Gupta has already demonstrated that.

AL VREDEVELD

CLASS OF 2006

TO BE A COMPUTER

programmer was Al Vredeveld’s ambition. And then, as an undergraduate at Ohio State University, he landed a summer internship at IBM in Rochester, Minn. He liked the work. He liked the people. But Vredeveld,

now 26, didn’t really fit in.



Many of Vredeveld’s co-workers enjoyed playing the fantasy card game “Magic: The Gathering” next to the

vending machines in the company lunch room. He didn’t. In short, he was an extrovert in a world of introverts.

“It’s a stereotype about computer people,” Vredeveld says. “But in this case it bore itself out in reality.”

Vredeveld decided to apply his knowledge of computers and other high-technology applications to the law. After completing his coursework, the third-year student will work full-time at Shumaker & Siefert, a firm specializing in intellectual property law.

As an intern at the Woodbury, Minn., firm, Vredeveld has written about 20 patent applications, the research for which includes interviewing the inventor. The key to writing an application that will likely be approved by the U.S. Patent Office, he says, is to

make realistic claims about the product's possible uses in a "clear and organized" manner.

"It was my job to describe cutting-edge technology in a way that non-technological people could understand," he says.

Vredeveld's graduation this spring won't be the end of his formal education. The Ohio native plans to pursue a master's degree in electrical engineering at the University of Minnesota in the next few years. Gaining expertise in that field will help him understand the microcomplexities of computer processing.

Many of Vredeveld's co-workers enjoyed playing the fantasy card game "Magic: The Gathering" next to the vending machines in the company lunch room. He didn't. In short, he was an extrovert in a world of introverts.

So what about Vredeveld's need to mix it up socially? He's shined in that area through his involvement in Law Council and TORT, the Theater of the Relatively Talentless.

After serving as secretary and vice president of Law Council during his first and second years of law school, he's now the group's president. Law Council distributes funds to student organizations and organizes social events.

One of its social events is TORT, the quirky, low-expectation play students create every spring. This year, the ad-hoc group performed *West Bank Story*. Vredeveld was a member of the chorus, but not much else. He's extroverted, but not among the most talented actors of the relatively talented. He mostly focused on fundraising and promotion.

However, in the group's 2005 production of *Walter Wonka and the Lawyer Factory*, Vredeveld did get to bounce

around the stage while wearing a huge Gopher head. It was an over-the-top finale to a successful play—and something he never would have done while sitting in the lunch room at IBM.

ANNA PIA NICOLAS CLASS OF 2007

AS AN UNDERGRADUATE, Anna Pia Nicolas wasn't sure what occupation she wanted to pursue, so she sampled several possibilities.

While attending New York University in Manhattan, Nicolas participated in the "America Reads" program in public schools in Chinatown and the Bedford-Stuyvesant neighborhood of Brooklyn. She also interned at Big Apple Circus, a local performance group.

One of the highlights of that experience, says Nicolas, was when she met actor Harrison Ford at a Big Apple Circus fundraiser. "He said my name in that husky Indiana Jones voice," she says, giggling.

The native of Brick, N.J., graduated *summa cum laude* with a degree in communication studies in 2002. She quickly secured a gig in the book publishing industry—the quintessential Manhattan job.

At Wiley Publishing, a historic company that printed the works of Edward Allen Poe and Herman Melville, Nicolas was in charge of marketing a line of architecture and design books. The book publishing job was challenging, the work fun, but in the end, it didn't sustain her intellectual curiosity.

"Law school was always in the back of my mind," she says. "But I didn't want to go just because I couldn't find something else to do."

During her stint at Wiley, Nicolas' boyfriend studied law at Fordham University. His classes prompted her to take the LSAT in 2003. Two years later, she was a first-year student at the

University of Minnesota Law School.

"Minneapolis is more cosmopolitan than I thought," she says.

As a law student, Nicolas has been impressed with the professors and intellectual rigor of her classes. In addition to her studies, she's also been involved with the Asian-American Law Student Association, William McGee National Civil Rights Moot Court Competition, and the American Bar Association's Negotiation Competition.



Nicolas joined the University of Minnesota Law School's newly formed negotiation team, which had an impressive showing at a 2005

tournament. With 16 teams competing, Nicolas and her colleagues finished first and third in the two-round competition, narrowly missing a chance to advance to nationals. "Negotiation is such an important skill," Nicolas says. "No one wants to go to trial."

She's clerked at Fishman, Binsfeld & Bachmeier, gaining experience in immigration law. This summer, she plans to work at Blackwell Igbanugo, a firm with offices in Minneapolis; Troy, Mich., and Washington, D.C. At Blackwell Igbanugo, she'll focus on commercial litigation.

The book publishing job was challenging, the work fun, but in the end, it didn't sustain her intellectual curiosity.

Those experiences will help Nicolas decide what type of law to pursue after graduation. In the meantime, she's busy participating in school activities and studying, of course. "This is the most challenging thing I've done," she says, clearly pleased that that's the case. ●

By Todd Melby. Melby is a Minneapolis-based freelance writer and independent radio producer.

› Student Organization Spotlight

The Woman's Law Student Association



ALTHOUGH MUCH OF THE history of the Women's Law Student Association (WLSA) group has been lost in the years since its founding, rumor has it that the group was originally founded to fund childcare for women at the Law School. The group was given a space on the first floor for a used bookstore for that purpose. These days, the childcare facilities are gone, but the used bookstore remains, and WLSA has grown in both size and purpose. It is one of the Law School's oldest and best-established student groups.

Today, the group remains dedicated to advancing the interests of women in the law and in the legal profession. WLSA has a particular interest in helping its members find jobs and mentors in the local legal community. To that end, WLSA hosts a number of events throughout the year to advance these interests. An annual judicial luncheon brings female judges from throughout the state to the Law School. Due to the success of the luncheon, with positive endorsements

from the judges and students, WLSA has added similar events to the schedule: One lunch includes local women attorneys, and the other features women from the Minnesota Legislature. These events have helped expand the imagination of WLSA members as to what their future

WLSA has worked hard to open doors to a wide array of professional fields for the Law School's women.

careers might hold and for giving them practical advice on how they can achieve their career goals. WLSA also sponsors one student law clerk each summer to work in a public interest firm addressing women's issues.

Several smaller events held throughout the school year are the work of WLSA, as well. The life balance panel explores issues regarding balancing personal and professional life. Successful practitioners are regularly invited to share their insight and advice about their practice areas. In addition to such programming, WLSA cultivates a close relationship with Minnesota Women Lawyers (MWL), providing access to experienced women who willingly share their experiences regarding the legal profession. Many WLSA members in turn are members of MWL, and participate in MWL events, on its committees, and in its attorney-student mentorship program.

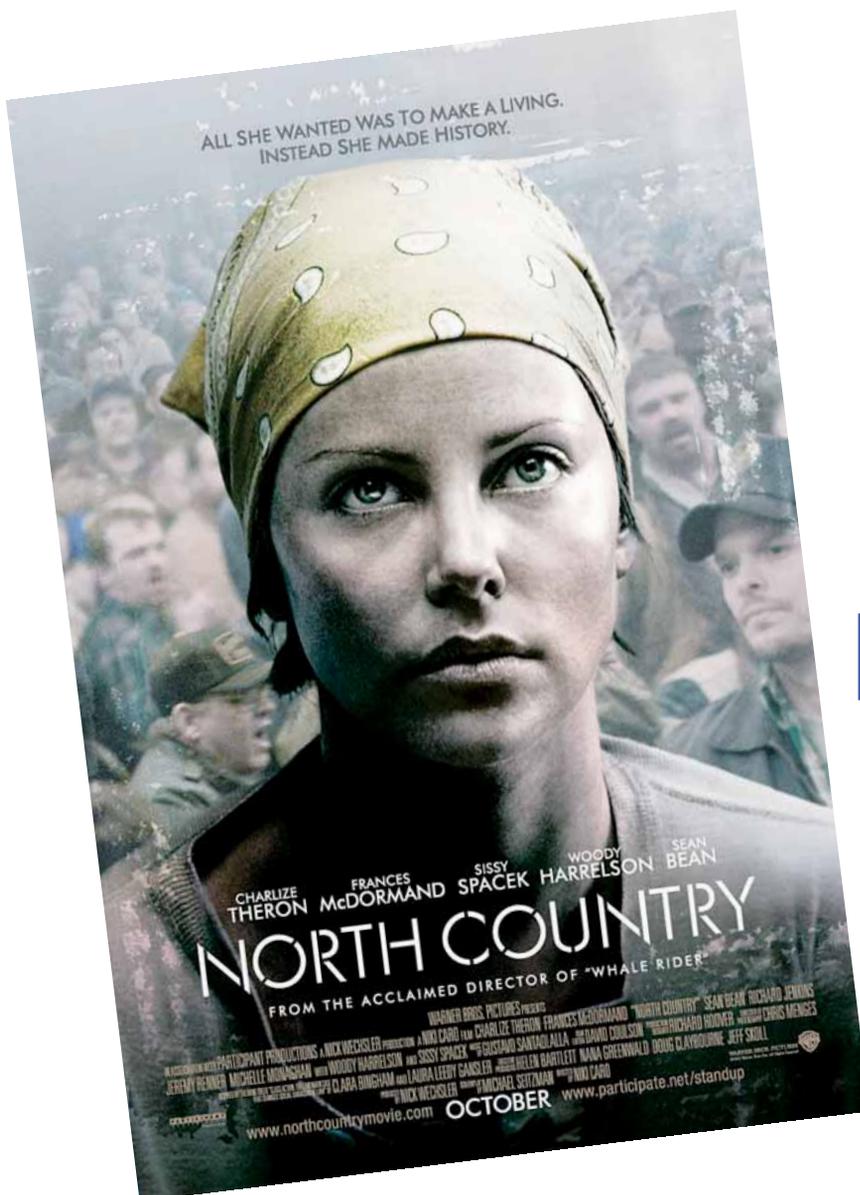
Since its inception, WLSA has worked hard to open doors to a wide array of professional fields for the Law School's women, and to inform the larger community about issues that affect all women. WLSA looks forward to continued progress in making careers in the legal profession suitable to the needs of women lawyers. ●

By Brita Johnson, Class of 2007.



Class of 1966

ALUMNI PERSPECTIVE The Law School is justifiably proud of its alumni and their accomplishments. To keep great graduates connected to the school and involved in its future success, this year marked a groundbreaking reunion effort. The first Spring Alumni Weekend featured events for all alumni, and specifically brought together the Classes of 1996, 1986, 1981, 1966, 1956, and all classes from 1955 and earlier. Get a glimpse of the emerging Alumni Weekend tradition in this section, along with coverage of the Hollywood flick *North Country* and its links to the Law School and to the University at large. Also in this section, read profiles of distinguished alumni and the ever-informative Class Notes. Check the calendar on the back cover of *Perspectives* to find out when you can reconnect with fellow graduates in person—and mark your April 2007 calendar now for the Second Annual Spring Alumni Weekend, April 12–15, 2007!



HOLLYWOOD'S brush with the LAW

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

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

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

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

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

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

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

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

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

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

A brief history of *Jenson v. Eveleth*

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

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

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

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

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

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

● **April 1974**

- Under an EEOC consent decree to settle charges of discriminatory hiring, Eveleth Mine agrees to hire women and minorities in 20 percent of all new jobs.

● **March 1975**

- Lois Jenson begins working at Eveleth Mines.

● **October 1984**

- Jenson files a sexual harassment complaint with the Minnesota Department of Human Rights

● **January 1987**

- The State finds probable cause and moves for conciliation, but the mine's management company, Oglebay Norton, refuses to pay any punitive or compensatory damages to Jenson.

● **August 1988**

- Paul Sprenger files the case in U.S. District Court, requesting certification as a class action. The case includes three named plaintiffs.

● **May 1991**

- The class certification hearing begins before Judge James Rosenbaum.

© Explore Minnesota Tourism Photo.



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

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

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

North Country's *Version of the Facts*

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

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

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

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

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

- **December 1991**

- Anita Hill begins testifying in the Clarence Thomas confirmation hearings.

- **December 1991**

- Judge Rosenbaum certifies the case as a class action, the first such certification for a sexual harassment lawsuit.
- 139 F.R.D. 657 (D. Minn. 1991).

- **January 1992**

- Lois Jenson's deteriorating health forces her to stop working at the mine. Shortly after, she is diagnosed with post-traumatic stress disorder.

- **December 1992**

- The liability phase of the bifurcated trial begins before Judge Richard Kyle in St. Paul, Minn.

- **May 1993**

- Judge Kyle rules that Eveleth Mines is liable for maintaining a sexually hostile working environment. 824 F. Supp. 847 (D. Minn. 1993). Judge Kyle subsequently appoints retired magistrate Patrick McNulty of Duluth, Minn., as a special master to oversee the damages phase of the case.

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

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

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

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

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

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

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

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

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

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

- **November 1994**
- Plaintiff Pat Kosmach dies of Lou Gehrig’s disease.
-
- **February 1994**
- Magistrate McNulty permits defense counsel to request plaintiffs’ medical records dating from birth; weeks of grueling depositions follow.
-
- **January 1995**
- The first half of the damages trial begins.
-
- **May 1995**
- The damages trial resumes, concluding on June 13.
-
- **March 1996**
- Magistrate McNulty issues a 416-page report that awards plaintiffs minimal damages.
-
- **December 1997**
- The Eighth Circuit reverses McNulty’s decision and remands the case for a jury trial on damages. 130 F.3d 1287 (8th Cir. 1997).
-
- **December 1998**
- On the eve of trial, the remaining 15 plaintiffs settle with Eveleth Mines for a total of \$3.5 million.

Who's Who in North Country

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

Attorneys

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

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

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

Judges

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

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

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

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

Other Professionals

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

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

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

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

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

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

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

By Leslie A. Watson. Watson is a freelance writer and a 1999 graduate of the Law School. She can be found online at www.thebusypen.com.

New Spring Alumni Weekend Celebrates the Law School and Its Alumni



Pre-1956 Luncheon



Class of 1956



Pre-1956 Luncheon

On a lovely weekend in April, alumni from around the country gathered for the Law School's first Spring Alumni Weekend. This new event celebrating the Law School and its alumni featured a weekend of activities for the whole Law School community.

The Weekend began with a luncheon for all alumni who graduated more than 50 years ago. A jovial crowd gathered at the University of Minnesota's Campus Club to reminisce and to hear about all that is happening at the Law School. Next year that group will be joined at the luncheon by the Class of 1956, which held its 50th Reunion at Eastcliff during the Weekend. One of the most influential Law School



All-Class Reception



Class of 1981



Class of 1996



Class of 1986

Save the date now for next year's
 Spring Alumni Weekend,
 April 12–15, 2007
 We hope to see you there!

classes, the Class of 1956 includes approximately 16 people elected to various offices, including former Vice President Walter Mondale. The classes of 1966, 1981, 1986, and 1996 also held individual reunions during the weekend at venues throughout the Twin Cities. The

Law School is very grateful to the many class reunion volunteers who helped organize their class dinners and other class-specific events during the weekend. In addition to individual class reunions, Spring Alumni Weekend included a cocktail party for all Law School alumni,

faculty, students, and staff; a free CLE program with former Law School Professor Donald Dripps (now with the University of San Diego School of Law); and a Sunday brunch at Nicollet Island Inn in conjunction with the Law School's annual Race for Justice, a 5K fun run and walk.

By Sara Jones, '88, director of Alumni Relations and Annual Giving.

› Distinguished Alumni Profiles

JEFFER ALI CLASS OF 1994

THE NEXT TIME YOU SAVE money by having a generic prescription filled, thank an attorney. Like chemists, doctors, and the Federal Drug Administration, lawyers play a key role.

“Generic drug makers are invariably sued,” explains Jeffer Ali. Ali is a partner with Merchant & Gould, a Minneapolis-based firm renowned for its expertise in intellectual property law. He specializes in patent litigation, with much of his work helping generic drug companies sell less-expensive medications without committing patent infringement.



JEFFER ALI

Ali is especially qualified for his line of work. He obtained a doctor of pharmacy degree from the University of Michigan College of Pharmacy in 1990 and then spent a year working as a retail pharmacist. While he enjoyed helping people, he decided he wanted to help society in a broader way. With the aid of a full Royal A. Stone scholarship, he enrolled in the University of Minnesota Law School. The study of law combined with his knowledge of science led Ali to his niche.

After graduating in 1994, Ali spent a few years at Bassford Remele practicing mainly in the area of medical malpractice defense. He joined

Merchant & Gould to practice patent litigation in 1998.

In 1999 and 2000, he taught at the Law School as an adjunct professor for the Intellectual Property Moot Court. Also in the late '90s, he cochaired his firm's pro bono program and served on the board of directors of the Volunteer Lawyers Network. In 2000, he received the Volunteer Lawyers Network Pro Bono Attorney of the Year Award for his service. The 40-year-old father has also served as his firm's hiring partner.

As for his work, he could not be more satisfied with it. “These cases are significant and consequential,” Ali says. “Generic drugs are important for patients and for our health care system in general.”

PAUL DAY CLASS OF 1978

PREDICTABILITY IS NOT FOR Paul Day. As District Court Judge of the Mille Lacs Band Tribal Court in Onamia, Minn., he might handle a divorce one minute, tax matters the next. In addition, he must not only consider the laws of the tribe—those cover everything but major crimes, which are handled by the federal judiciary—but also its cultural values and traditions.

Frustration with his first career led Day to discover his knack for navigating complex matters.

Armed with a sociology degree from St. Cloud State University, Day devoted the first half of the '70s to bettering the education of American Indian youth. “The dropout rate was 70 to 80 percent,” Day says. Something needed to be done, yet many of the potential solutions Day proposed met the same brick wall. Be it a not-for-profit, the Minneapolis school district, or the legislators whom he worked with, Day repeatedly heard the inevitable reply, “Well that's all inter-

esting, Mr. Day, but the law doesn't work that way.”

He decided to learn the parameters for himself and enrolled at the Law School in 1975. However, by the time he graduated in 1978, he knew the legal/tribal boundaries were ever-changing. As a result, he needn't—and couldn't—know all the answers; he “just got good at finding them.”



PAUL DAY

Day set up a private practice in Bemidji, Minn., near the reservation of his tribe of origin, the Leech Lake Band of Ojibwe. “It was half-Indian, half non-Indian,” he said of his clientele. But that didn't last long. Through his work, Day had earned quite a reputation. And he'd met the then-U.S. Attorney, James M. Rosenbaum, '69, who encouraged Day to apply to the office.

Day spent his next five years as an assistant to the U.S. Attorney, expanding not only his knowledge, but his scope of experience. “Once the Red Lake Band of Ojibwe sued the Bureau of Indian Affairs (BIA), over regulations and management of the tribe's sawmills. I represented the BIA, the white guys,” Day recalls with a chuckle.

After his stint with the attorney's office and an interim position with a Wisconsin tribe, Day found a position closer to both his Twin Cities and tribal homes as corporate counsel for the Mille Lacs Band of Ojibwe's business division. But that didn't last long, either. Just months into his position, the tribal chair and council appointed him district judge. “It's a different challenge every day,” explains Day, who's been content ever since.

SARA GURWITCH

CLASS OF 1995

EN VOGUE INVESTIGATIVE crime and courtroom shows drive Sara Gurwitch crazy. “They’re so pro-prosecution,” she laments.

As deputy attorney-in-charge of the nonprofit Office of the Appellate Defender (OAD) in New York City, Gurwitch knows this mindset’s inadvertent victims: people falsely convicted, or, as is frequently the case, fairly convicted but serving sentences disproportionate to their drug-related crime.

Gurwitch cites ineffective representation for the disadvantaged as a common culprit. For example, one of her clients—a Vietnam vet suffering from post-traumatic stress disorder—is serving six to 12 years for selling \$20 worth of crack. Although he’s undoubtedly an addict, Gurwitch says, “there is strong evidence that he’s not a drug seller, evidence the jury never learned about.”



SARA GURWITCH

Gurwitch handles 15 to 20 cases at a time, and is sometimes able to get a reversal of a wrongful conviction, or reduction of a particularly harsh sentence. However, there is usually at least one case each year that sticks with her, where she can’t get the court to see the unfairness, and the circumstances seem truly unjust.

As a student, Gurwitch received a Human Rights Center fellowship grant to work with the California Appellate Project in San Francisco. After law school she spent a year working against the death penalty in Minnesota and then completed a clerkship in New

York. Gurwitch signed on with OAD eight years ago. For most of that time, she has reflected on a past client “at least once a week.” This young man had been convicted of murder based on the testimony of older, tougher gang members. “He was the weakest of the group,” Gurwitch points out, as though there’s still a chance someone might hear her.

To sustain her through such times, Gurwitch has both her passion for the work and the energy of fresh recruits. As an adjunct professor at New York University’s School of Law, she works with 10 students each year, as well as three to five attorneys in OAD’s training program. “They remind us, the supervisors, why we went into this work,” she says.

Gurwitch is proud to play a role in the students’ lives similar to that played by the Human Rights Center and clinics at the Law School. The Human Rights Center was ahead of the curve, Gurwitch says. “It recognized very early on that human rights issues are a U.S. issue, a backyard issue... My area of interest was criminal law, and that human rights perspective to doing criminal law, I carry it with me in my work and try to instill it in my students.”

KAREN JANISCH

CLASS OF 1994

KAREN JANISCH MAY HAVE A sought-after office, but she never had designs on it. In fact, Janisch was quite surprised when Minnesota Gov. Tim Pawlenty tapped her to be general counsel for the Office of the Governor in 2003. “I’m not a political person,” Janisch explains.

But the governor wasn’t after a politico; the office required someone he could trust. And after he worked with Janisch in an adjoining office at Rider Bennett in Minneapolis (both practicing educational law) for some eight years, she was a natural pick.

Although it certainly wasn’t in any career plan, and certainly pays less than her private-practice career, the position suits Janisch well. “It’s really fun,” she says. “You never know what will happen.”



KAREN JANISCH

With everything from snowmobiles to gaming compacts to advise upon—basically anything the governor’s office might be interested or involved in—Janisch is never bored. Nor does she have time to be. Often, the governor needs an answer within just a few hours.

This immediacy is one of the ways Janisch’s role differs from that of the attorney general’s. Janisch also works with the governor on judicial selection and advises on the legality and implications of yet-to-be proposed policies.

Janisch focuses on legal matters related to policy issues rather than the development of policy proposals. For example, in relation to illegal immigration policy, she reviewed federal law that expressly prohibits local communities from enacting ordinances that restrict police officers and other employees from inquiring about a person’s immigration status.

The only thing Janisch misses from her prior practice is being involved directly in litigating cases. But that is a small tradeoff, she says.

Janisch says she hopes Pawlenty wins in ’08. “It’s a fun job,” she says, “I’d like to keep it.”

RICHARD LARSON

CLASS OF 1969

I’VE NEVER BEEN ON THE wrong side of a case,” says Richard Larson. Throughout his 35 years of practice, Larson has consistently fought for the rights of workers, women, racial minorities, the differently abled, and the underprivileged.

Business Law Clinic Needs Volunteers!



KOMMERSTAD CENTER

For
BUSINESS LAW
And
ENTREPRENEURSHIP

The **University of Minnesota Law School's Business Law Center** needs experienced volunteer business, real estate, and employment law attorneys willing to supervise students in the **Minnesota Multi-Profession Business Law Clinic**. The clinic provides no-fee transactional legal services for start-up and emerging businesses.

Many of the Clinic's business clients are minority-owned for-profit entities that do not qualify for pro bono service under Minnesota Rule of Professional Responsibility 6.1(a). They may qualify as pro bono clients under Rule 6.1(b).

The Clinic takes clients by referral from the Minnesota Economic Development Association, the University's Office of Business Development, the Carlson School of Management, the University's Patent and Technology Marketing office, and other sources.

Interested attorneys can contact **Mary Alton** in the Clinic offices at 612-524-5779 or **Professor John Matheson** at 612-525-3879.



RICHARD LARSON

Most recently, he won a civil rights case against the Los Angeles County Metropolitan Transportation Authority (MTA). "It was going to gut its bus system in order to put hundreds of million of dollars into a rail-line to nowhere," Larson says.

After a decade-long fight, which began in 1994, Larson, working with the NAACP Legal Defense and Educational Fund Inc., forced the MTA to shaft its subterranean plans—and double on-the-street service.

"In general, poor folks and minorities from across the spectrum rely on public transportation to get to work, shop, etc.," Larson says. "You can link it to the Montgomery bus boycott of 1955 with Rosa Parks."

Through the years, Larson has argued before the Supreme Court four times, including the landmark 1984 *National Black Police Association Inc. v. Velde*. Then with the American Civil Liberties Union, Larson convinced the high court that the Department of Justice should deny federal funds to local enforcement agencies that discriminate against minorities and women through unnecessarily restrictive requirements, such as a minimum height of 5'7".

Such victories frequently thrust this alum into the spotlight. Larson, who lives just below the "Hollywood" sign, has appeared as a guest commentator on every major network, presented testimony in 10 congressional hearings, and is also a frequently requested guest lecturer.

There is one group in particular Larson is interested in reaching—the next generation of civil rights attorney-activists. Through the University of Southern California, Adjunct Professor Larson has taught Civil Rights Law to roughly two dozen students at a time for the past six years. "It's great to see law students interested in working on civil rights for the future," he says.

As for his own plans, only one thing is certain: Retirement is not in the immediate future. "I love what I do," he says, "and I'm not quitting." ●

By sue rich, a St. Paul, Minn.-based freelance writer and editor.

Class Notes

Send us your news

Tell us about the important things that happen in your life! We welcome submissions for inclusion in the Class Notes section of *Perspectives*. Submit your news through our Web site at www.law.umn.edu/alumni/submit.html.

You can also send your update to Scotty Mann via e-mail at smann@umn.edu, regular mail at N160 Walter F. Mondale Hall, 229 19th Ave. S., Minneapolis, MN 55455, or fax at (612) 626-2002. We need your submissions by Oct. 1, 2006, for inclusion in the next issue. Finally, anyone interested in serving as a Class Reporter please contact Scotty Mann.

Thank you for keeping in touch!

1936

Myer Shark was featured in the January 2006 issue of *Hennepin Lawyer*. Shark believes attorneys, regardless of age, do not outgrow their obligation to the community, saying, "If they're able, it's important for seniors to keep applying their legal skills to help low-income families. . . without our commitment, they have no voice in court and no effective constitutional protection." The 92-year-old St. Louis Park, Minn., attorney continues to participate in utility matters before the Minnesota Public Utilities Commission (MPUC) and the courts. Besides volunteering to represent individuals through the Volunteer Lawyers Network, Shark has initiated a proceeding that seeks the recovery of excess utility fees, a surplus estimated at \$150 million, collected from ratepayers over and above "just and reasonable" rates approved by the MPUC.

1941

Judge Gerald Heaney will retire in June after a long career as a labor lawyer and jurist. Among many career accomplishments, he represented the Duluth teacher's association and helped make the Duluth School District the first in Minnesota to adopt the same pay scale for men and women.

1957



Len Kne has been voted as a member of the board of directors for the Central Minnesota Development Co. in Coon Rapids, Minn.

1966

John W. Thompson is an attorney with the Missouri Department of Social Services and represents the Children's Division in child abuse and neglect cases in St. Louis City and County, Missouri.

1969



Daniel Gislason, a partner in Gislason & Hunter LLP in New Ulm, Minn., has become a fellow in the American College of Trial Lawyers.

1970

Magistrate Judge Raymond L. Erickson has become the Chief U.S. Magistrate Judge for the District of Minnesota. He was first appointed in 1992 and was reappointed in 2000.

1972

Justice James H. Gilbert has opened the Gilbert Mediation Center in Eden Prairie, Minn.

1974

James B. Wieland, a principal at the Ober|Kaler law firm, has been appointed to the Maryland legislature's Task Force to Study Electronic Health Records, an advisory panel that will make recommendations to Maryland lawmakers on electronic medical records policy and issues related to regional health information organizations.

1975

Cynthia Fischer joined Schnader Harrison Segal & Lewis LLP as a partner in the firm's New York office. She is general corporate counsel and business advisor to a number of Italian and other foreign-owned companies and individuals doing business in the United States, as well as United States-based companies and individuals. She provides general corporate, distribution, licensing, franchising, trade regulation, and intellectual property advice.

Alan Silver was selected for inclusion in *The Best Lawyers in America*. Silver is a shareholder with Bassford Remele PA, practicing in the area of commercial and business litigation.

1976

Stuart Gibson works in Washington, D.C., for the U.S. Department of Justice and was recently promoted to senior litigation counsel. He is primarily responsible for litigating and coordinating the civil litigation of large tax shelter cases.

1976

Richard Kaplan and Madge Thorsen, '77, opened their own firm in Minneapolis, Thorsen Kaplan LLC.

1977

Mark E. Warren has been promoted to executive vice president and general counsel of NCL Corp. Ltd. The company, based in Miami, owns and operates Norwegian Cruise Line, NCL America Cruises, and Orient Lines.

1978

Ron Hunter, of Cargill Inc., was elected to the board of the Minnesota Association of Black Lawyers, Minneapolis.



Charles E. Lundberg, a shareholder with Bassford Remele PA, was elected as a fellow in the American Academy of Appellate Lawyers at the academy's recent meeting. The American Academy of

Appellate Lawyers recognizes outstanding appellate lawyers and promotes the improvement of appellate advocacy and the administration of the appellate courts.

1979

Steven A. Anderson, of rural Princeton, Minn., has been appointed a district judge by Minnesota Gov. Tim Pawlenty. He will fill the Seventh Judicial District opening at the Mille Lacs County courthouse in Milaca, Minn.



Edward Fox was selected for inclusion in *The Best Lawyers in America*. Silver is a shareholder with Bassford Remele PA, practicing in the area of complex commercial litigation.

1980

Joe Finley a 25-year real estate attorney at Leonard, Street and Deinard, became president of the 200-lawyer firm. Finley, 53, a Saint Paul, Minn., native who hails from an extended family of lawyers, joined the firm in 1979.

In Memoriam Tribute

David J. Byron

Class of 1966

David J. Byron passed away on Feb. 13, 2006. Prior to attending the Law School, Mr. Byron graduated from the University's Carlson School in 1963. He joined Rider Bennett LLP (then known as Rider, Bennett, Egan & Arundel) in Minneapolis in 1969, after several years with the Minnesota Attorney General's Office. In the course of an outstanding legal career, Mr. Byron served as Rider Bennett's managing partner and was chair of the business department for more than 15 years. In addition to his practice at Rider Bennett, Mr. Byron was a retired colonel of the Minnesota National Guard, having served for 26 years, and at the time of his death he was chairman of the City of Edina Planning Commission.

Mr. Byron and his partners at Rider Bennett were instrumental in the creation of the Rider, Bennett, Egan & Arundel Founders Scholarship, which provides annual scholarships for third-year students



at the Law School. The scholarship honors Stuart W. Rider, Jr., '43; Gene F. Bennett, '50; William T. Egan, '50; and Edward M. Arundel, '51. The Law School is

grateful to Mr. Byron for his support, and for his leadership in creating this important scholarship benefiting students with demonstrated financial need.

At the 40th Reunion for the Class of 1966 in April, Mr. Byron was fondly recalled by a number of classmates, who praised him for the qualities that made him beloved by family, friends, clients, and colleagues. Mr. Byron will be remembered as an outstanding attorney, a warm and loving friend and family member, and a devoted Twins fan. He is survived by his beloved wife of 34 years, Nancy; children, Therese (Eric) Otten and Daniel (Christina) Byron; and two grandchildren, Andy and Daisy.

Susan Gaertner, Ramsey County, Minn., attorney, was elected president of the Minnesota County Attorneys Association.

1981

Laura Cadwell accepted a position as director for Ending Long-Term Homelessness in Minnesota Gov. Tim Pawlenty's office.

Betty Shaw has been named acting director of the Lawyers Professional Responsibility Board and the Client Security Board.

Michael Unger has opened his own firm in downtown Minneapolis, the Michael Unger Law Office.

Doris E. Yock has been elected a shareholder of Leonard, Street and Deinard. Her practice focuses on intellectual property, primarily trademark and copyright matters.

1982

Robert C. Phelps has been named a partner at Pillsbury Winthrop Shaw Pittman LLP's San Francisco office. His practice emphasizes antitrust litigation and counseling, franchise litigation under the Petroleum Marketing Practices Act, and litigation under the California Unfair Competition Act.

1985

Jeff Saunders has joined Fulbright & Jaworski LLP as a partner in the Minneapolis office. Saunders is a member of the firm's corporate department, and has represented public and private companies for more than 20 years, handling private and public equity offerings, mergers and acquisitions, joint ventures, corporate governance, and compliance. Saunders counsels companies in a broad range of industries, focusing primarily in the areas of medical device, biotechnology, healthcare, information technology, and telecommunications.

1986

Joseph Kinning has joined Fulbright & Jaworski LLP as a partner in the Minneapolis office of the firm's corporate department. Kinning has successfully counseled a variety of regional and national corporate clients through complex mergers and acquisitions, securities offerings, financings, and other business transactions. He also has represented clients in a variety of industries and has significant experience representing buyers and sellers of energy assets.

1987

John P. Boyle joined Moss & Barnett as a member of the firm's litigation department, where he is practicing in the areas of commercial disputes and labor and employment litigation.

Timothy Jung joined Rider Bennett as an associate and practices in the litigation department focusing on the defense of personal injury and commercial litigation.

Benson Whitney was appointed U.S. Ambassador to Norway. He looks forward to representing American values, achievements, and even weaknesses, and to listening to people with other perspectives.

Niel Willardson was named general counsel for the Federal Reserve Bank of Minneapolis. In addition to this new responsibility, he will continue to be the senior vice president responsible for the bank's supervision, regulation, and credit division.

1988

Jeff Alch has joined U.S. Trust Co. as a vice president and client relationship officer.

Perry Johnston has joined Aperio Technologies, the leading provider of virtual microscopy systems to the health care information technology industry, as vice president of legal, regulatory, and compliance.

1990

Wayne D. Anderson has been appointed examiner of titles by the judges of the Second Judicial District, Ramsey County, Minn.

Donald Enockson has practiced family law in Minneapolis and St. Paul since graduation. Since 1998 he has been with El-Ghazzawy Law Offices LLC in Minneapolis. He is chair of the Family Law Section of the Minnesota State Bar Association for 2005-2006.

Kristine Kubes was been appointed by Minnesota Gov. Tim Pawlenty to the Board of Architecture, Engineering, Land Surveying, Landscape Architecture, Geoscience, and Interior Design. She has been an attorney in the construction law group at Meagher & Geer in Minneapolis since 2002.

Kristin K. Schoepfoerster is providing expert guidance in estate planning at the Columbus Group of Northwestern Mutual Financial Network.

1991

Peter K. Richardson has joined the law department of The Northwestern Mutual Life Insurance Co. as assistant general counsel on the products and distribution team. Previously, he was a partner at Michael Best & Friedrich LLP in Milwaukee.



Class of 1968 Breakfast Celebrates New Chief Justice



Classmates laud—and occasionally roast—Minnesota Supreme Court Chief Justice Russell Anderson

MEMBERS OF THE CLASS OF 1968 GATHERED together bright and early on the morning of Jan. 23, 2006, at the Law School to celebrate their classmate Minnesota Supreme Court Justice Russell Anderson as he prepared to be sworn in as the chief justice. The breakfast, held in Auerbach Commons, was also attended by Dean Alex M. Johnson, Jr., and Emeritus Professor Don Marshall.

Classmates traveled from near and far to honor Chief Justice Anderson, who was appointed by Minnesota Gov. Tim Pawlenty, '86, to replace retiring Chief Justice Kathleen Blatz, '84. Previously, Chief Justice Anderson had served as an associate justice of the Minnesota Supreme Court; he was first appointed by Gov. Arne Carlson in 1998. He came to the Supreme Court from the Ninth Judicial District, where he was a district court judge (chambered in Crookston) from 1982 to 1998.

After Dean Johnson's welcoming remarks, a number of classmates offered stories, words of wisdom, and possibly a tall tale or two. Among the speakers were Minnesota Supreme Court Justice Paul Anderson, former Michigan Gov. James Blanchard, Robert Tennesen, Alan Weinblatt, Robert Hennessey (who shared an amusing anecdote about an exchange between Professor Arnold Enker and Bruce Burton, '68), and Michael Gavin. As a finale, Chief Justice Anderson briefly addressed the group, sharing serious insights about judging and some amusing words of his own.

The Law School is grateful to Robert Tennesen for organizing the breakfast and for serving as master of ceremonies, and special thanks is due to William Cameron, '69, for producing 16- by 20-inch prints of the original Class of 1968 photo for those in attendance and for serving as the event's photographer.

—Eds.

Holly Williams is the new general counsel for Precept, a provider of employee benefits procurement, HR consulting, administration, health management, and data management solutions. She will provide labor law and general corporate law to the company's middle-market employer clients, and will advise senior executives on risk management issues. She was previously general counsel for a biotech-

nology company in Orange County, Calif., and a partner for 10 years at national law firm Robins Kaplan Miller & Ciresi, where she handled employment and business matters for Fortune 100 and 500 firms.

1992

Deena M. Bennett works in Riverside County, Calif., in the district attorney's office, where she has tried several high-profile cases. She was a contestant on the reality TV show *Survivor* (#6): *The Amazon* in 2003, and also competed in the Ironman World Championships in Kona, Hawaii, in 2004. She

and her husband Paul, a deputy sheriff, are raising two sons.

David Dormont tried and won two of the cases listed in the *Pennsylvania Law Weekly* review of the state's top 10 largest judgments or settlements for the year.

Marcy Frost has become a shareholder in Moss & Barnett, Minneapolis.

Jack Wightman, of Omaha, Neb., has been promoted to general counsel of First Data Resources, part of First Data Corp.'s financial institution services business segment.

1993

Douglas R. Boettge has been elected a shareholder of Leonard, Street and Deinard. His practice focuses on business and commercial litigation and class action litigation.

Sachin Jay Darji joined Hinshaw & Culbertson LLP as a partner. His practice focuses on real estate transactions, entrepreneurship, business planning, and general business law.

Michael Lafeber has been elected shareholder at Briggs and Morgan. Michael practices in the firm's intellectual property section.

Duluth, Minn., native **Aaron Latto** was appointed second vice president for Technology/International Claims at St. Paul Travelers. He joined St. Paul Travelers in March 2000 after practicing law in Minneapolis, and was formerly director of underwriting and technology/market solutions.

Lowell Rothschild was elected partner at Venable, in Washington, D.C.. He advises corporate, institutional, and governmental clients on federal and state environmental, health, and safety issues.

Sharna Wahlgren joins the partnership of Fulbright & Jaworski LLP, in the Minneapolis office; previously she was a senior associate. Her practice is devoted to litigation, including intellectual property, complex commercial, business, and franchise matters. Wahlgren's intellectual property practice is focused on patent and trademark issues. Her complex commercial and business litigation practice includes breach of contract, unfair competition, trade secret, and non compete matters.

1994

Bridget Hust made partner at Faegre & Benson LLP in the Minneapolis office.

Elizabeth A. Wefel is the director of career and professional development for the University of St. Thomas School of Law in Minneapolis.

1995

Laura Baumann is staff counsel for the California Secretary of State in Sacramento, Calif. She works in the business programs division as a corporate merger attorney.

Andrew (Scott) Fruechtemeyer, a partner at Dinsmore & Shohl LLP in Cincinnati, has been named an "Ohio Super Lawyer—Rising Star" by *Law & Politics*.

Susanne Glasser has become an associate of the M. Sue Wilson Law Offices in Minneapolis.

Erik Hawes joins the partnership of Fulbright & Jaworski's Houston office, where he was formerly a senior associate. He practices primarily in the area of commercial litigation, with an emphasis on intellectual property matters. He also has extensive experience handling all aspects of complex commercial contract and patent litigation matters in state and federal jurisdictions across the country.

Riddhi Jani married Minneapolis architect Christopher Nels Thompson in a traditional Hindu Gujarati ceremony. Honored guests included Peter Baatrup, '95; Dan Pauly, '95; Shawn Bruner, '96; Gina Lombardo, '96; Minnesota Rep. Steve Simon, '96; Amy Swedberg, '96; and Laura Walvoord, '97. The couple honeymooned in Mauritius over the New Year's holiday.

Christopher J. Keller has accepted a position with Baker & McKenzie in Palo Alto, Calif.

Jon Tynjala was elected treasurer of the board of directors of Lawyers Concerned for Lawyers, a non-profit that assists Minnesota lawyers, judges, and law students who are drug- or alcohol-dependent, or suffer from mental health impairments, stress, and life-balance issues.

1996

Foley & Lardner LLP announced the promotion of Madison, Wis.-based attorney **Christopher C. Cain** to the partnership. He is a member of the firm's business law department. He focuses his practice primarily on mergers and acquisitions, technology transactions (particularly software-related matters), and corporate and commercial law.

C. David Flower is working for Ameriprise Financial Inc.

Gregory Golla has joined the partnership at Merchant & Gould PC in Minneapolis.

The international law firm of Jones Day named **Jason D. Krieser** as a partner. He is based in Jones Day's Dallas office and will focus his practice on technology issues.

Gray Plant Mooty announced that **Charles Wilson** has been elected principal of the firm's Minneapolis office. Wilson concentrates his practice in the areas of real estate and commercial financial services.

1997

Sascha (von Mende) Henry has volunteered to serve as your Class Reporter for *Perspectives*. Please send your news to her, and she will gladly compose a class report for the Fall 2006 edition of *Perspectives*.

Her contact information is as follows:

Sascha Henry
Sheppard Mullin Richter & Hampton
333 S. Hope St., 48th Floor
Los Angeles, CA 90071-1448
(213) 617-5562 (direct)
(213) 617-1398 (fax)
shenry@sheppardmullin.com

Be sure to congratulate Sascha—she recently made partner at Sheppard Mullin.

John Bursch, a partner with Warner, Norcross & Judd LLP, was recently appointed the publications chair for the American Bar Association's Council of Appellate Lawyers.

Gregory Erickson has joined the law firm of Mohrman & Kaardal as a certified real property specialist practicing in the areas of banking, real estate, bankruptcy/workout, and commercial litigation.

Kenyon & Kenyon announced the election of **Linda Shudy Lecomte** as counsel in the firm's New York office.

Lori Schneider recently moved to Austin, Texas, where she is assistant director for grants in the Texas Attorney General's Bureau of Crime Victim Services.

1998

Stacey Drentlaw and **Cyrus Morton** have been elected partners of Oppenheimer Wolff & Donnelly LLP, in Minneapolis.

Steven Kluz has joined the law firm of Mohrman & Kaardal, practicing in the areas of insurance coverage, commercial litigation, and trade regulation.

Clara Ohr serves as counsel in the Office of the General Counsel for the Export-Import Bank of the United States in Washington, D.C.

Byung Keun Jin works for the J&P Law Firm in South Korea, where his practice focuses on tax law.

James W Poradek and **Amy Seidel** made partner at Faegre & Benson LLP in Minneapolis.

Andrew Shimek is the national sales manager for LexisNexis™ Applied Discovery.®

Laura M. Varriale recently became the assistant general counsel for the State of Wisconsin's Department of Commerce, where she will be primarily responsible for legal issues arising from the Petroleum Environmental Cleanup Fund Award.

1999

Timothy Maher and **Matthew Armbricht** started Guzior Armbricht Maher, a general practice firm with a strong emphasis on immigration and on providing services to the immigrant communities in the Twin Cities.

Greg McAllister joined Merchant & Gould, Minneapolis, as an associate.

Raphael (Ray) Wallander, was named a 2006 "Rising Star" by *Minnesota Law & Politics* magazine, and has joined the law firm of Mohrman & Kaardal, practicing in the areas of bankruptcy/workout, dealership law, banking, and commercial litigation.

2000

Ryan M. Benson has joined Benson Law Office in Siren, Wis., where he practices with his father and brother.

Clayton W. Chan has been selected as a "Rising Star" by *Minnesota Law & Politics* magazine. Clayton practices at Winthrop & Weinstine PA, in its estate planning and business succession group.

Mark Girouard is an associate in the commercial litigation and labor and employment groups of Halleland Lewis Nilan & Johnson, in Minneapolis.

Oliver Kim lives in Arlington, Va., and works as a legislative assistant on health and welfare issues to U.S. Sen. Debbie Stabenow of Michigan.

Jason Krellner recently moved to Denver and accepted a position with Morrison & Foerster LLP.

Daniel J. Nitzani has accepted a position as staff attorney with O'Melveny & Myers LLP in Los Angeles.

2001

Anna Burgett and **Christine Longe** joined Rider Bennett as associates in its business department.

Francis Green recently joined Larkin Hoffman Daly & Lindgren as an associate, focusing on real estate transactions. He was also elected to the board of the Minnesota Association of Black Lawyers, Minneapolis.

Matthew Kostolnik joined Moss & Barnett in Minneapolis.

David Selden joined Fried, Frank, Harris, Shriver & Jacobson LLP in New York in November 2005, where he focuses on a variety of investment management and securities law matters, with emphasis on the formation and offering of private investment vehicles, including hedge funds, private equity and real estate funds, and funds-of-funds.

Juha Vesala is with the department of private law at the University of Helsinki, Finland.

2002

Erin Minkler is practicing in General Mills' legal department in Minneapolis.

Mark Polston has joined the real estate development practice group in the Washington, D.C., office of Womble Carlyle Sandridge & Rice PLLC.

Maura Shuttleworth works in the civil division of the Washington County (Minnesota) Attorney's Office when she's not training for or competing in international bench-press championships.

Brian Stegeman has joined Henson & Efron PA as an associate. His practice focuses on corporate law.

2003

Joshua Brinkman joined Littler Mendelson's Minneapolis office as special counsel.

Dorothy Gause works in the 10th Judicial District Public Defender's Office. She is full-time in the juvenile division in Washington County, Minn., and says, "In other words, I got everything I had hoped for."

Adam A. Gillette has accepted a position with Nichols Kaster & Anderson PLLP.

Cheree Haswell Johnson, 3M, and **Nicole Morris**, Robins, Kaplan, Miller & Ciresi, were elected to the board of the Minnesota Association of Black Lawyers, Minneapolis.

Cedar Holmgren recently moved to Denver and has joined Snell & Willmer.

Jeremy Johnson is an associate at Gray Plant Mooty and a member of the firm's business and general litigation practice group.

Sumbal Mahmud accepted a position as associate corporate counsel for Best Buy Corp. She is grateful that her boss allowed her to defer her start date for one month so that she could travel to Pakistan and join in earthquake relief efforts, as well as visit with her family.

2004

Altat Baki is in Chicago working for Equity Office Properties Trust.

David Cox is with the Anoka, Minn., firm Soucie & Bolt PA, practicing plaintiff's personal injury.

Amy Baumgarten has joined Meagher & Geer's health care practice group.

Gina M. Nelson has opened her own firm, the Gina M. Nelson Law Office, in Minnetonka, Minn. The firm represents clients in matters of estate planning, probate and trust administration, and business organization and transactions.

Heather Olson, an associate in Gray Plant Mooty's St. Cloud, Minn., office practicing in the area of business and general litigation, was one of three Minnesota lawyers appointed as legal counsel to the recently opened 46th Consulate of Mexico in St. Paul, Minn. The priority of the consulate is to protect and serve Mexican-Americans in Minnesota, North Dakota, South Dakota, and Northern Wisconsin by providing consular services, promoting trade and investment, and encouraging cultural and educational exchanges.

Dalindyabo Shabalala is a research fellow for the Access to Knowledge in Developing Countries Project in Geneva, Switzerland.

Adam C. Speer is an associate attorney at Best & Flanagan LLP, practicing commercial real estate lending.

Sheree (Knack) Speer accepted a position as staff attorney for the Office of the Revisor of Statutes, in Minnesota.

Tamela Woods is practicing law at Mayer, Brown, Rowe & Maw LLP, in Chicago, in the firm's corporate and securities group.

2005

Divya Arora lives in Chicago, where she serves as Illinois assistant attorney general in the employment and labor unit of the General Law Bureau.

Best & Byron in Minneapolis hired associates **Gulzar Babaeva**, corporate and technology and e-commerce group; **Katie Nordahl**, real estate group; and **David Weber**, corporate and international group.

Mark Czarniecki is an associate in the corporate securities department of Chapman and Cutler LLP's Chicago offices.

Lindsay M. Fainé and **Jennifer Cullen** have joined Rider Bennett LLP.

The UNIVERSITY OF MINNESOTA LAW SCHOOL

THE TWENTY-SEVENTH ANNUAL SUMMER PROGRAM OF CONTINUING LEGAL EDUCATION SEMINARS

May 30–June 9, 2006

Featuring University of Minnesota Law School Faculty

May 30 8:30 a.m.–4:30 p.m.	A Primer on and New Developments in Internet Law <i>Professor Dan L. Burk</i>
May 31 8:30 a.m.–4:30 p.m.	A Primer on the First Amendment <i>Professor Michael Stokes Paulsen</i>
June 1 8:30 a.m.–4:30 p.m.	Systematic Statutory Interpretation <i>Professor Jim Chen</i>
June 2 8:30 a.m.–4:30 p.m.	Recent Developments in Tax Procedure <i>Professor Kathryn Sedo</i>
June 3 9 a.m.–3 p.m.	Recent Development in the Regulation of Lawyers and Judges: Rules, Cases and Statutes (morning)* and Dealing with Bias in the Courtroom (afternoon)** <i>Professor Maury S. Landsman</i>
June 5 8:30 a.m.–4:30 p.m.	Digital Evidence and Related Issues in Cyberspace <i>Professor Joan S. Howland</i> <i>Professor Michael J. Hannon</i>
June 6 8:30 a.m.–4:30 p.m.	Business Concepts for Lawyers <i>Professor Edward S. Adams</i>
June 7 8:30 a.m.–4:30 p.m.	Indian Gaming Law 101 and Recent Developments <i>Professor Kevin Washburn</i>
June 8 8:30 a.m.–4:30 p.m.	Understanding the Current State of the Law in Trademarks, Copyright, and Related Areas of Intellectual Property <i>Professor Daniel J. Gifford</i>
June 9 8:30 a.m.–4:30 p.m.	The Constitution and the Rehnquist Court <i>Professor Dale A. Carpenter</i>

6.5 General credits have been requested for each course, May 30–June 2 and June 5–9.

*3.0 Ethics credits have been requested for June 3 (morning).

**2.0 Elimination of Bias Credits have been requested for June 3 (afternoon).

*For more information: www.law.umn.edu/cle/
phone (612) 625-6674
e-mail LSCLE@umn.edu*

*\$195 per seminar or use the SuperPass and save!
Take up to 7 courses for only \$695!*

Debra Frimerman and **Brittany Stephens** recently joined Lindquist & Venum PLLP as associate attorneys.

Inchan Hwang joined Gray Plant Mooty's Minneapolis office as an associate in the business law transactions and entrepreneurial services groups.

Maribeth Klein joined Bryan Cave LLP in Phoenix as an associate in the environmental client service group. Prior to attending law school, Klein was a process engineer for General Mills.

Andrew Lagatta joined Merchant & Gould in Minneapolis as an associate, practicing general intellectual property law.

Landon Loveland joined Bryan Cave LLP in Phoenix as an associate in the firm's class and derivative actions and commercial litigation client service groups.

Brian Lindsey is working in the Office of the Law Revision Counsel of the U.S. House of Representatives.

Fredrikson & Flanagan in Minneapolis hired **Bart McIlonie** and **John Stern** as associates in its commercial real estate lending group.

Douglas Peters has joined Robins Kaplan Miller & Ciresi LLP.

Christine Riopel is an associate in the public finance section of Briggs and Morgan.

Adam R. Smith is serving as in-house legal counsel for Grinnell Mutual Reinsurance Co.

Alex Yap is working for Morrison & Foerster LLP in Los Angeles.

Luciana Zamith is practicing immigration law with the firm of Bernstein & Associates in Florida.

University of Minnesota Law School

China University of Political Science and Law
Summer Study Abroad Program in Beijing, China

May 27, 2006–June 30, 2006

www.law.umn.edu/llm/chinasummer.html

Curriculum and Course Descriptions

Students may opt to enroll in three or fewer of the offered courses (no more than six credit hours total). Classes will run from Monday, May 29, through Wednesday, June 28. Final exams will be on June 29 and 30. Courses will be graded on an A-F basis in accordance with University of Minnesota Law School grading policies. Course grades will be determined largely by performance on final exams.

Comparative Land Use

Professor Ann Burkhart
(featuring guest lecturers from local institutions)
Two semester credit hours
Monday–Wednesday, 10 a.m.–11:10 a.m.;
two Thursdays, 8:30 a.m.–11:30 a.m.

Introduction to Chinese Economic Law

Dean Stephen Hsu
One semester credit hour
Monday–Tuesday, 6 p.m.–7:10 p.m.

Comparative Business Entities

Professor John Matheson
(featuring guest lecturers from local institutions)
Two semester credit hours
Monday–Wednesday, 8:30 a.m.–9:40 a.m.;
two Thursdays, 8:30 a.m.–11:30 a.m.

Beginning/Intermediate Chinese

Students may choose between beginning and intermediate levels
Instructor(s) to be determined
Two semester credit hours
Monday–Wednesday, 1 p.m.–2:20 p.m.;
Friday 8 a.m.–9:20 a.m.

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Program Cost Information

Tuition will be US\$2,500 for five or fewer credits of instruction. Those who wish to take a sixth credit will be charged an additional US\$500. Housing costs for students staying at the on-site facility will be US\$1,890, which includes three meals a day for the duration of the program. A tuition deposit of US\$250 and a housing deposit of US\$150 are due within three weeks of notification of admission and the balance of tuition and housing shall be due May 1, 2006.

Participating students are responsible to obtain the Chinese visa necessary to participate in the program. Transportation to and from Beijing is not included in the program cost—students should prepare to make their own arrangements for airfare.

The estimated total cost for the program is (in U.S. Dollars):

Tuition and Fees	\$2,500
Housing (incl.meals)* (double occupancy)	\$1,890
Incidental Expenses	\$500
Airfare	\$1,200
Visa	\$100
Total	\$6,190

*Single occupancy \$2,730

In Memoriam

CLASS OF 1939

Neil A. Riley

Nov. 14, 2005

Brooklyn Park, Minn.

CLASS OF 1950

E. Thomas Binger

Jan. 23, 2006

Wayzata, Minn.

Allan R. Lund

Feb. 9, 2006

Minneapolis, Minn.

CLASS OF 1951

Peter Barna

Sept. 29, 2005

Minneapolis, Minn.

Thomas E. Ticen

March 4, 2006

Hopkins, Minn.

CLASS OF 1953

Kenneth Jack Gill

Dec. 28, 2005

Santa Monica, Calif.

Philip E. Schwab, Jr.

Aug. 28, 2005

Santa Ana, Calif.

CLASS OF 1955

Leroy C. Corcoran

Nov. 30, 2005

Washington, D.C.

D. James Nielsen

July 18, 2005

Long Lake, Minn.

CLASS OF 1966

David J. Byron

Feb. 13, 2006

Edina, Minn.

Mark H. Rodman

March 2, 2006

Swampscott, Mass.

CLASS OF 1992

James C. Boos

Nov. 15, 2005

Duluth, Minn.

University of Minnesota Law Alumni Society

OFFICERS

Stacy L. Bettison '99, *President*
Professor Brad Clary '75, *Secretary*
Professor Stephen F. Befort '74, *Treasurer*

DIRECTORS

Term Ending 2006

Stacy L. Bettison '99, *Minneapolis, MN*
Elizabeth Bransdorfer '85, *Grand Rapids, MI*
Joseph T. Carter '83, *Apple Valley, MN*
Christopher J. Chaput '98, *Chatham, NJ*
Judge A. James Dickinson '65, *St. Paul, MN*
Neil Fulton '97, *Pierre, SD*
Judge Natalie Hudson '82, *St. Paul, MN*
Brian L. Johnsrud '96, *Palo Alto, CA*
Edmundo D. Lijo '86, *St. Paul, MN*
Charles Noerenberg '82, *St. Paul, MN*

Term Ending 2007

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Thomas A. Clure '63, *Duluth, MN*
Judge Joan Ericksen '81, *St. Paul, MN*
Joan L. Heim '68, *Washington, DC*
Thomas R. Hood '73, *New York, NY*
Dave M. Kettner '98, *Madison, WI*
Judge LaJune T. Lange '78, *Minneapolis, MN*
David V. Lee '70, *Los Angeles, CA*
Judith L. Oakes '69, *Minneapolis, MN*
Judge Edward J. Wallin '67, *Orange, CA*

Term Ending 2008

Leslie M. Altman '83, *Minneapolis, MN*
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James Cho '99, *Chicago, IL*
Bradley J. Clary '75, *Mendota Heights, MN*
Dan Goldfine '88, *Scottsdale, AZ*
Joan Humes '90, *Minneapolis, MN*
Nora Klaphake '94, *Minneapolis, MN*
Marshall Lichty '02, *St. Paul, MN*
Judge Peter Michalski '71, *Anchorage, AK*
Nick Wallace '05, *Minneapolis, MN*
Ann Watson '79, *Minneapolis, MN*
Carolyn Wolski '88, *Minneapolis, MN*

Alex M. Johnson, Jr., *Dean Emeritus*
Fred L. Morrison, *Interim Dean*
Guy-Uriel E. Charles, *Interim Dean*

<p>MAY 30–JUNE 9, 2006</p> <p>Twenty-Seventh Annual Summer Program of Continuing Legal Education Seminars</p> <p>Walter F. Mondale Hall</p>	 <p>JUNE 22, 2006</p> <p>Law School Alumni and Friends Reception at the Minnesota State Bar</p> <p>2006 Convention, June 21–23 Madden's in Brainerd, MN</p>	<p>SEPTEMBER 12, 2006</p> <p>Benjamin N. Berger Professor of Criminal Law Reappointment Lecture</p> <p>Professor Richard S. Frase University of Minnesota Law School</p>
<p>SEPTEMBER 19, 2006</p> <p>The Julius E. Davis Professor of Law Reception</p> <p>Minneapolis Club</p>	<p>OCTOBER 3, 2006</p> <p>James Anneberg Levee Land Grant Chair in Criminal Procedure Law Appointment Lecture</p> <p>Professor Kevin Reitz University of Minnesota Law School</p>	<p>OCTOBER 10, 2006</p> <p>William B. Lockhart lecture</p> <p>Professor Jack Balkin, Knight Professor of Constitutional Law and the First Amendment Yale University Law School</p>
<p>OCTOBER 13, 2006</p> <p>Minnesota Law Review Symposium <i>"9/11 Five Years On: A Comparative Look at the Global Response to Terrorism"</i></p>	<p>OCTOBER 24, 2006</p> <p>John Dewey Lecture in the Philosophy of Law</p> <p>Professor George Fletcher Columbia Law School</p>	<p>NOVEMBER 2, 2006</p> <p>William B. Lockhart Club Dinner</p> <p>McNamara Alumni Center University of Minnesota</p>
<p>NOVEMBER 3, 2006</p> <p>Law Alumni Society Board of Directors Annual Meeting</p>	<p>NOVEMBER 4, 2006</p> <p>Law Alumni Society Homecoming CLE</p>	<p>NOVEMBER 28, 2006</p> <p>Briggs and Morgan Professor of Law Reappointment Lecture</p> <p>Professor Michael Stokes Paulsen University of Minnesota Law School</p>

This is not an exhaustive list of events occurring at the Law School. For a complete listing, please see the Law School's Web Site, www.law.umn.edu, or contact Scotty Mann at (612) 626-5899 or smann@umn.edu for additional information.

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