

Public Law News

A Publication of the Minnesota State Bar Association Public Law Section

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CELEBRATING OUR 15TH YEAR AS A MSBA SECTION!

Public Law Section

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MSBA



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Fall CLEs Brought To You By The Public Law Section

Strategies to Address Livability Crimes

Co-sponsored by the Minneapolis City Attorney's Office and the Public Law Section

October 14, 2005

1:00-4:30 p.m.

Currie Conference Center, 1200 Currie Avenue North, Minneapolis

Topic: **Presentations By Minneapolis City Attorney's Office And Minneapolis Police Department**

- 1:00 - 1:15 Welcome and opening remarks
- 1:15 - 1:45 Community Prosecution Initiatives
- Broken Windows
 - Minneapolis City Attorney's Office Community Attorney Program
 - Prosecution of top offenders (or chronic offenders)
- 1:45 - 2:30 Legislative Strategies
- Aggressive solicitation
 - Trespass
 - Loitering
 - Other (e.g., public urination, possession of drug paraphernalia in a public place)
- 2:30 - 2:45 Break
- 2:45 - 3:30 Systems Strategies
- CLEAN
 - Downtown Security Collaborative
 - Restorative Justice
 - CCNP
 - Midtown
 - Minor consuming/police diversion program
 - Community Impact Statements
- 3:30 - 4:30 Technology Strategies
- Stop on Red
 - Safe Zone camera system
 - Geo-Mapping/geographical restrictions mapping
 - Electronic Court watch
 - Cyber block club

This CLE is FREE, however you must pre-register so that sufficient copies of the printed materials are available for all attendees. Three CLE credits to be applied for.

To register contact Barb Laroen at 612/673-3201.

Police Pursuit Issues

Co-sponsored by the Minneapolis City Attorney's Office and the Public Law Section

November 29, 2005

12:00-1:30 p.m.

City of Lakes Building, 309 2nd Avenue South, Minneapolis

Presentations by Minneapolis Chief William McManus, Fridley Director of Public Safety Donald Abbott, and Assistant Minneapolis City Attorneys Tim Skarda and Jim Moore.

There is no cost for this seminar. To reserve a space, please call Pat Detchons at 612/673-2449.

Public Law Section Annual Awards

On May 20, 2005 the PLS presented its 10th annual awards of excellence. Set out below are the comments made at the awards presentation ceremonies.

Rosalie E. Wahl Judicial Award of Excellence



Presented to **Allan W. Klein** by former Supreme Court Justice Rosalie Wahl at his retirement party on May 4, 2005.

Allan Klein retired recently after having spent almost 30 years as a Hearing Examiner, Administrative Law Judge, and Supervising Administrative Law Judge for the State of Minnesota. At the time of his retirement Judge Klein coordinated the handling of cases primarily in the areas of utilities regulation, environmental regulation, and transportation regulation. He also assisted in coordinating other full-time and part-time contract Administrative Law Judges.

Judge Klein decided several hundred cases for the Office of Administrative Hearings (OAH). These cases involved virtually every agency served by the OAH, as well as many cities, counties and special districts. Major cases over which Judge Klein presided involved Nuclear Waste Storage at Prairie Island, the Acid Rain Rule, Environmental Costs of Generating Facilities, the Godfather Liquor License, Big Marine Lake Water Level, the Red River Dike Rules, and Wilmarth Powerline.

In comments in his nomination letter for Judge Klein, Administrative Law Judge George Beck said about Judge Klein:

Allan has distinguished himself as a teacher and author in the area of administrative law and as the chair of a state board [State Board of Government Innovation and Cooperation]. But in my view his crowning achievement is the very positive impact he has had in conducting major environmental and public utilities cases for the State of Minnesota and in advising other ALJs conducting these hearings. These hearings are the most complex and controversial matters handled by OAH. They involve multiple parties and attorneys as well as significant public involvement. The subjects of his hearings have included matters such as nuclear waste storage, utility rates, acid rain, lake water levels, and

power lines. He had conducted these hearings in a highly professional manner and demonstrated to all parties an impartiality that created a confidence that all viewpoints would be considered. Allan has issued lengthy recommended decisions in these cases that demonstrate an understanding of the technical subject matters and a rational application of the law to the facts. Allan's hard work has resulted in a culture of high standards at OAH and in a reputation for the Office of Administrative Hearings of impartiality and competence. I believe this very admirable career is well deserving of recognition.

Judge Klein also led the OAH's efforts to make remote access available so that ALJs who are out of the office still have access to all of the legal research and other tools available to them in the Office. He orchestrated the first use of multiple ALJs for cases with tight timelines or unusually large records. The arbitration for the Public Utilities Commission, involving AT&T, MCI, and MFS on the one hand and US WEST on the other, involved some 90-plus issues, many of which presented substantial technical questions. The case was divided between four ALJs, who issued a 72-page report within 12 days after the close of the record.

Another nominator best summarized Judge Klein's accomplishments as an ALJ when he said; "in every instance, when someone asked me 'who's the Judge', upon hearing that it was Judge Klein, they would respond 'you've got a good Judge.' In my opinion, there could be no higher compliment and no clearer demonstration of the commitment and dedication of a lawyer practicing in the public sector."

Julius E. Gernes Prosecutor Award of Excellence



Presented to **Steve Redding**, Assistant Hennepin County Attorney by Nancy McLean.

It's a great honor for me to introduce the recipient of this year's Julius Gernes Award.

This award is intended to recognize the work and dedication of an outstanding prosecutor working at the state, federal or local level. The award is named in memory of the late Julius E. Gernes, former Winona County Attorney and

chief prosecutor who was well known and highly regarded by county attorneys throughout Minnesota and whose professional achievements as a public attorney encompass the attributes of this award.

I knew Jules Gernes when he was the Winona County Attorney. His reputation for excellence was known and appreciated statewide. What you may not have known about him was that he also served for many years on the Lawyer's Professional Responsibility Board. I succeeded him in what was then the "public lawyer" seat. He was one of the first public lawyers to take a leadership role on a Supreme Court Board.

That type of leadership in the courtroom and in the profession is what marks the career of this year's Julius Gernes Award winner.

Steve Redding has been a colleague of mine at the Hennepin County Attorney's Office for the last 20 years. His accomplishments speak for themselves but I'd like to take a minute to tell you why he is such an exceptional lawyer and leader in his field.

Steve is "Mr. DNA" in the State of Minnesota. But beyond that he is a nationally recognized leader in the field of DNA evidence in criminal trials. He has argued numerous DNA admissibility issues before the Minnesota Supreme Court and the Minnesota Court of Appeals. He successfully argued to change Minnesota law, which had previously precluded statistical evidence in Minnesota criminal trials. He successfully prosecuted the first two "cold hit" DNA cases in the United States. In 1995, he successfully prosecuted one of the most complex DNA cases ever to go to trial, involving the serial rapes of fifteen women over a two-year period of time.

He has lectured extensively on the use of DNA evidence both locally and at the national level, including three invitations to lecture at the International Symposium on Human Identification. He is a member of the teaching faculty of the American Prosecutors Research Institute and, as part of a grant from the Department of Justice, is currently involved with other faculty members in creating an interactive CD-ROM for prosecutors on the subject of preparing and presenting DNA evidence in court. Additionally, he spends much of his time informally advising others on the issues DNA evidence may present. His formal audiences include lawyers, judges, military personnel, scientists, and law enforcement personnel. His work has expanded as the technology of DNA testing has. He has conducted numerous *Frye* hearings and established the credibility of DNA evidence in Minnesota courtrooms.

In addition to his DNA responsibilities in the Hennepin County Attorney's Office, he also acts as a mentor for younger lawyers. He has taken numerous younger lawyers along for a second chair ride.

Finally, and we all recognize the value of this endorsement – *Law & Politics* named him as a "Super Lawyer".

It is with great pleasure that I introduce this year's Julius E. Gernes Award winner, Steve Redding. Congratulations Steve!

William E. McGee Public Defender Award of Excellence



Presented to **Brad Colbert**, Minnesota State Public Defender's Office and Legal Aid to Minnesota Prisoners clinic at William Mitchell College of Law, by Diane Alshouse.

This award was established to recognize a public defender who has demonstrated a commitment to "the fair, nondiscriminatory administration of justice and representation of citizens of limited means." Across the past twenty years, through his work with the State Public Defender's Office and through his teaching at William Mitchell College of Law, Brad Colbert has lived that commitment.

Following his graduation from William Mitchell in 1985, Brad joined the State Public Defender's Office. During the past two decades, he has proved to be a tireless advocate for his clients and has become one of Minnesota's foremost appellate lawyers. Brad has argued well over one hundred cases before the Minnesota Court of Appeals and numerous cases before the Minnesota Supreme Court. Among these is *State v. Rewitzer*,¹ a case of first impression, in which he successfully persuaded the Minnesota Supreme Court that the fines and surcharges levied on his client violated the Excessive Fines Clause of the United States and Minnesota Constitutions. In addition, in 1998, he argued the case of *Minnesota v. Carter*,² before the United States Supreme Court.

In addition to his appellate work, Brad has also exemplified his commitment to the representation of the disadvantaged through his work with the Legal Aid to Minnesota Prisoners (LAMP) clinic at William Mitchell College of Law from 1989 to the present. The LAMP clinic provides *pro bono* representation to Minnesota prisoners in civil legal matters. Under Brad's supervision, William Mitchell students have represented Minnesota prisoners before administrative tribunals, district court judges, and the

Minnesota Court of Appeals. For many years, the State Public Defender's Office operated a LAMP clinic at each of the Minnesota law schools. Unfortunately, in 2003, due to budget constraints, the State Public Defender's Office discontinued the clinic. At that time, working together with faculty at William Mitchell, Brad made the commitment to continue the work of the LAMP clinic and accepted a part-time position as a Resident Adjunct Professor at William Mitchell. He continues to operate the LAMP clinic here at William Mitchell, the only such program still in existence in Minnesota.

As a teacher, in the classroom and in the clinic, Brad inspires his students to step forward and advocate on behalf of clients who otherwise would not have a voice in the justice system. His unswerving devotion to his clients and his unfailing good humor are also an inspiration to his colleagues at William Mitchell. As both a teacher and an advocate, he stands as a reminder that a true commitment to justice demands both diligence and joyfulness.

Public Attorney Award of Excellence – Public Law Office



Presented to Joan Humes, Assistant United States Attorney, by Mary Tripler.

Joan DeCoursin Humes is the recipient of this year's Public Lawyer Award of Excellence. It is an honor given to an attorney who's professional and private lives are dedicated to public service. There

could be no one more deserving of such recognition than Joan. The public good informs both her work and her personal life.

When I thought about how best to describe Joan to those of you who may not know her well, I start with the basics. Her resume discloses that, even before she went to law school, Joan was interested in public service, starting her professional life as a Hennepin County Social Worker. After attending law school at the University of Minnesota Law School, where she was named to the Order of the Coif and was awarded the Edward J. Devitt award for scholarship, Joan began her public law practice.

She first went to work for Skip Humphrey in the Minnesota Attorney General's Office. In 1992, Chief Judge James Rosenbaum from the federal district court lured Joan away from state practice. Joan clerked for Judge Rosenbaum for two years. Then, in 1994, she joined the U.S. Attorney's Office as an Assistant United States Attorney in the Civil Division. She has since been promoted to Civil Chief.

Over the last 10 years, Joan has also been an adjunct professor at William Mitchell College of Law, teaching a much in demand pretrial litigation course. She also regularly teaches at Metropolitan State University's law enforcement academy and the Justice Department's National Advocacy Center.

So those are the basics on the professional side – Joan has worked for county, state and federal governments as a social worker, lawyer and teacher. It is Joan's innovation, creativity and relationship building, however, that truly set her apart and that make the honor she receives today so deserved.

Let me give you an example. Several years ago, Joan was asked to prosecute a bias crime in southern Minnesota. She convicted the young defendants of cross burning. But, for Joan, that was not the end of it. Her experience led her to understand that law enforcement needed guidance to recognize and investigate hate crimes. So, Joan developed a training program. She put together a hate-crimes training team including representatives of the FBI, the Minnesota Attorney General's Office, the Minnesota Bureau of Criminal Apprehension and the Jewish Community Relations Council among others. She created innovative, multi-media training materials showing what hate crimes are, how witnesses should be treated, how evidence should be preserved, etc. With other members of the training team she assembled, Joan has trained hundreds of law enforcement officers across the State of Minnesota. And the training has been so effective that the materials are now in use throughout the United States.

Joan also took hate crimes training into the public schools working with Illusion Theater in Minneapolis to develop a hate crimes/retaliation prevention project for Minnesota high school students. But her outreach didn't stop there. Joan saw a need to move beyond the civil rights cases she investigated and prosecuted, beyond the law enforcement community and the schools. She saw the need to be present in minority communities.

Terrorists attacked the World Trade Center and the Pentagon on September 11, 2001, and, on September 12, Joan was already reaching out to the Muslim community. Within two weeks, she met with representatives of the League of Minnesota Human Rights Commission and the Minnesota Muslim Council to explore what could be done in Minnesota to prevent scapegoating, stereotyping and discrimination against Muslims, Arabs and others who may be victimized following those terrible attacks.

Since then, Joan has represented the United States

Attorney's Office, visiting mosques, community centers, law schools, colleges, high schools, and community meetings to talk about hate crimes, discrimination, bias, terrorism, immigration and civil liberties. She has expanded her outreach to the Somali community, the Sikh community, and the Jewish community. She has met with elders, community leaders, students, federal and state law enforcement personnel, the media and the public to promote closer relationships with minority communities. Joan has shown extraordinary dedication in getting out the message that the United States does not countenance discrimination or bias.

Joan's dedication, innovation and creativity have been turned to other assignments with similar success. Several years ago, she was approached by a representative of the deaf and hard of hearing community who told her of a deaf couple with a complaint about the lack of interpreting services at a hospital emergency room. Instead of merely handling that complaint, Joan went to the deaf community to learn more about the kinds of problems the deaf and hard of hearing experience in receiving emergency medical care. She then put together a "hospital project." Joan (and others who have followed in her footsteps) has now brought all the major metropolitan hospitals into compliance with the Americans with Disabilities Act.

Joan also turned her innovation and passion for the public good to lead paint. Some time ago, she was asked by two housing advocates why the Department of Justice was not doing more to enforce lead paint disclosure requirements. Joan thought creatively and put together a lead paint coalition of representatives of the City of Minneapolis, the U.S. Department of Housing and Urban Development, the Environmental Protection Agency, the Department of Justice (DOJ) and housing advocates. Under Joan's guidance, the coalition chose 40 landlords to investigate for lead paint disclosure violations. Through consent decrees and other settlements, that work led to a significant abatement of lead hazards and an increase in compliance with disclosure laws, as well as a project that Greg Brooker is now spearheading for public education about lead hazards.

It is the same in the fair housing area. Joan developed a pilot project to train local federal employees as volunteer testers. Now Bureau of Prisons, FBI and DOJ employees from Minnesota are trained and sent throughout the country to test landlord compliance with fair housing laws.

I could go on about Joan's innovative leadership in service of the public good but I know she wants me to stop. Let me end by saying that Joan is equally passionate about public service in her private life. She is active in Habitat

for Humanity, currently serving on the Family Services Committee, helping to choose the applicants who will receive one of the Habitat homes. Through her church, Joan works with Project Home, a St. Paul homeless shelter. She also works with the Public Law Section on the Loaves and Fishes project and is an active member of the State Bar and of Minnesota Women Lawyers.

In the lobby of the Minneapolis Federal Courthouse, where Joan works, is a huge piece of dark green marble. From that stone slab are hung brass letters spelling out the words "Equal justice under law." Those four words guide Joan's work daily. She is a passionate, visible presence for justice and public service and is certainly deserving of the honor you bestow on her today.

Public Attorney Award of Excellence – Government Agency



Presented to **Gail Olson**, General Counsel of the Minnesota State Colleges and Universities System by Kim Buechel Mesun.

I have been a very lucky person in my legal career. I had the opportunity to work in the Minnesota Attorney General's Office for 12 years. This was an excellent training ground for a new lawyer. I was also fortunate to have had three terrific mentors during those years. And I am not the only person who thinks so. Look at your program of past and present PLS award recipients and you will see them: Beverly Jones Heydinger in 1996, John Kirwin in 2000 and this year's recipient – Gail Olson.

Gail started her legal career in the Minnesota Attorney General's Office. She soon became the Manager of the newly formed Human Services Rate Unit, then the Human Services Division and, eventually she served as a Deputy Attorney General for five years. At each stage she provided her brand of energetic leadership. She never shied away from taking on the tough and controversial issues. In the Human Services Division we used to tease Gail by saying that if there was ever a lull in our workload (and there never was), Gail could issue another "Olson letter" and the work would come pouring in. As an Assistant Attorney General and Manager she was involved in numerous cases at the Minnesota Court of Appeals and Supreme Court that are still cited today as leading cases in the area of administrative law.

Gail left the Minnesota Attorney General's Office seven years ago to become the General Counsel of the Minnesota State Colleges and Universities (MnSCU) System, initially

as part of the Attorney General's staff and then separately as a designated General Counsel for MnSCU. As General Counsel, she advises a system covering 34 state colleges and universities with over 235,000 students.

Gail has also been involved in many professional activities and community service activities. In a recent activity she played an integral part in putting on the annual conference of the National Association of College and University Attorneys in Minneapolis last year.

At the beginning I commented that I considered Gail to be a very valued mentor during my time in the Attorney General's Office – her talent as a mentor was best summarized by a letter submitted by Sandra Gardebring when she says:

A young lawyer with whom I am acquainted recently left a prestigious legal job in another setting to go to work for the MnSCU Office of General Counsel. When I asked him why he made the change, he said simply, 'It was the chance to work for Gail Olson. She is smart, she knows how to do public law and I know that I will get some great opportunities working for her.'"

I am very happy to present the 2005 Public Law Section Award of Excellence to Gail Olson.

Douglas K. Amdahl Public Attorney Career Achievement Award



Presented to **Philip Olfelt**, Retired, Assistant Minnesota Attorney General, by Warren Spannaus.

Phil Olfelt spent his entire adult professional life (about 35 years) working in the public sector. He started working on special projects as an employee of the State Legislature. He then moved to the

Minnesota Revisor's Office. He came to the Attorney General's Office when Douglas Head was Attorney General and stayed to work for Warren Spannaus and Hubert Humphrey, III. He retired in 1991, and since that time has done periodic part-time work for both the Attorney General's Office and the Revisor's Office. His career with the Attorney General was spent entirely with that Office's Natural Resources Division, which represented primarily the Minnesota Department of Natural Resources.

Phil became the institutional memory of the Natural Resources Division; Phil was the primary attorney for the Minnesota Land Exchange Board for many years. In that

capacity, he always stood out as a voice for proper management of the state school trust fund lands, and for the maintenance of the integrity of the state school trust fund. Sometimes at professional risk, he made sure that proposed land exchanges and other proposals to the Board were legitimate and always were to the benefit of the State and not just private parties.

Among many other issues, Phil was heavily involved in legislation dealing with Voyageurs National Park, in litigation affecting the Boundary Waters Canoe Wilderness Area, in the development of a process for the state taxation of severed mineral interests, and in the litigation over Reserve Mining Company's dumping of taconite tailings into Lake Superior. On several occasions he prevented schemes designed to obtain state lands or interest without appropriate process or compensation. As part of his involvement in the Reserve Mining Company litigation, he led efforts to protect the Tettegouche area of the North Shore from being used as a taconite waste dump. This area eventually became Tettegouche State Park.

Phil's influence on natural resources legislation and policy was significant. The management of the Department of Natural Resources placed great trust in his judgments and advice. His suggestions were taken to heart by policy makers from the Division of Forestry to the Division of Waters to the Division of Minerals. He was considered a friend and trusted confidant of several Commissioners of Natural Resources.

Phil also had a huge impact beyond the specific legal issues with which he was involved. He served as a mentor and friend to a large number of attorneys, both experienced and new, who came to the Attorney General's Office. He unselfishly taught them what he knew. He gave them practical as well as legal advice. Most of all he gave them his friendship and respect. There are many attorneys in public and private practice today who owe a large debt to Phil and to what he taught them.

Phil never sought recognition for his work. In fact, he tried to avoid such recognition. He was the epitome of a good public servant: hard working, ethical, sensitive, practical, and dedicated. This award gives recognition to his service, and shows him that his dedication to the public good is appreciated and honored.

Notes

¹ 607 N.W.2d 407 (Minn. 2000).

² 525 U.S. 83 (1988).

10th ANNUAL AWARDS LUNCHEON: MAY 13, 2005



Public Attorney Award of Excellence - Government Agency category: Gail Olson (left), Minnesota State Colleges and University System presented by Kim Buechel Mesun.



Julius E. Gernes Prosecutor Award of Excellence: Stephen Redding (right), Hennepin County Attorney's Office presented by Nancy McLean.



2004-05 PLS Cochair Dianne Ward.



Public Attorney Award of Excellence - Public Law Office category: Joan Humes (right), United States Attorney's Office presented by Mary Trippler.



Douglas K. Amdahl Public Attorney Career Achievement Award: Philip Olfelt, Retired (right), Minnesota Attorney General's Office presented by Warren Spannaus.



William E. McGee Public Defender Award of Excellence: Brad Colbert (right), Minnesota Public Defender's Office and Legal Aid to Minnesota Prisoners clinic at William Mitchell College of Law presented by Diane Alshouse.



Minn. Atty. General's Office Natural Resources Division alumni - (left to right) Bill Clapp, Steve Thorne, Andy Tourville, Jim Schoessler, Bill Szotkowski, Warren Spannaus, Phil Olfelt, and Byron Starns.



Minn. Atty. General's Office Human Services Division alumni - (left to right) Beverly Jones Heydinger, Gail Olson, John Kirwin, and Kim Buechel Mesun.

RETIREMENT CEREMONY FOR JUDGE ALLAN KLEIN: MAY 4, 2005



Rosalie E. Wahl Judicial Award of Excellence: The Honorable Allan Klein, Office of Administrative Hearings and Louis Thayer, PLS Awards Committee Co-chair, during Judge Klein's May 4 retirement ceremony.



Justice Rosalie Wahl.



Hon. Allan Klein, recipient of the Rosalie E. Wahl Judicial Award of Excellence presented by Justice Rosalie Wahl.

State Of The Judiciary

By: Chief Justice Kathleen Blatz

The following is the speech Chief Justice Kathleen A. Blatz delivered to the members of the Minnesota State Bar Association (MSBA) at the MSBA Convention on June 16, 2005. It is reprinted below with permission of the Court.

Thank you [David Stowman] for that kind introduction. First, let me thank David for his superb leadership this last year. The judiciary has long enjoyed a wonderful partnership with the Bar and a close relationship with its president. David Stowman has been second to none. He has been a wonderful steady hand at the helm of this Association and a vocal advocate for the needs of the Bar, the indigent, and the judiciary. Thank you, David.

And, I'm also looking forward to working with your new President, Sue Holden. She has an excellent track record of leadership and will be a strong voice for the profession.

My past seven and a half years as Chief Justice have been a time of tremendous administrative change. On a phased-basis, we have been transforming from a confederacy of 87 county-funded court system to a single, unified, state-funded branch of government. For all of you here today and for our hundreds of thousands of court customers each year, that will mean better access to justice for all Minnesotans, and greater consistency of service, procedures and practices all around the state.

Given the transition from county funding to state funding, we are also revamping our governance structure to better support the reality of a state-funded organization. We needed a new model of decision-making to achieve our strategic goals and policies and to allocate resources at the statewide level rather than the county level. So after many months of study and input from around the state, on July 1st we are prepared to launch our new governing body, the Judicial Council.

The Judicial Council will be transparent, accountable and comprehensive. Where the judiciary used to have several administrative governing groups, we will now have just one. In fact, the Conference of Chief Judges which began in 1978, had its final meeting yesterday. Now, statewide policy-making will be done by the Judicial Council, composed of 25 members including the ten chief judges. The Chief Judges will continue to contribute to statewide policy-making and play a vital role in managing their own districts.

In addition to the ten Chiefs, the membership on this Council is a blend of elected and appointed members—judges and administrators—who come from every judicial district and every level of court—the trial court, the Court of Appeals, and the Supreme Court. Each member is expected to make decisions based on the “good of the whole,” rather than on the basis of special interests or geographic areas.

For us, this is truly an exciting and important time of change. What hasn't changed is our commitment to continue our partnership with the bar as we work to improve our service, our policies and our processes in this new era.

It was also another important year for us at the Legislature. Fortunately, funding for the courts was included in one of the major spending bills that all sides agreed on, and the governor signed into law. So happily, court funding is not dependent on the outcome of a special session. That, in my view, is a very good thing.

While we didn't get all the funding we requested, the Legislature approved over 80% of our original request. It authorized 4 new judgeships for the fast growing 7th and 10th Districts, continued support for specialty courts such as drug courts and mental health courts and increased funding for our deserving civil legal services programs by an additional \$5 million each year.

This last item—Legal Services funding—passed in large part because of the vigilant watch kept by Jerry Lane, Bruce Beneke, and others, including your own President David Stowman. Their dedication and perseverance paid off—for all the right reasons. Legal Services is a vital part of an open and accessible court system. Our hat's off to them!

In addition to the state funding changes and the legislative package, 2005 is an important year for both the bench and the bar for another reason... and I can't comment on the current state of the judiciary without addressing it.

In the last few years, we have heard calls from certain corners about the need to alter the judiciary. But in recent months, this criticism has grown in intensity—mostly in response to a few controversial court decisions.

Surely this is not the first time in history that the role of the judiciary has been questioned. Over 200 years ago,

there was vigorous argument prior to and following this country's constitutional convention about the extent and nature of the judiciary's role in government.

While it is easy for some to dismiss the judiciary's current critics as ill-informed, no less than some of our country's greatest statesmen have debated this very issue, including Alexander Hamilton, Thomas Jefferson and the man often called the "Father of our Constitution," James Madison.

Some of our most notable presidents, including Thomas Jefferson, Abraham Lincoln, Andrew Jackson, Theodore Roosevelt, and Franklin Roosevelt, all fought openly with the Third Branch.

So while we must recognize that the debate is not new, what is unique is the *forum* in which that debate is taking place.

Our electronic age enables messages to be transmitted to millions of individuals at a time. Bloggers, pundits, web surfers, talk radio, and cable news shows can turn perception into reality in amazingly short periods of time.

And in this electronically charged reality, the phrase "activist judge" is being used with ever increasing frequency. While it is perfectly reasonable to have a debate about whether a judge went outside the parameters of the law, it becomes unreasonable when the label of "activist judge" is applied to every judge who makes a decision with which someone disagrees.

The breadth and depth of this phenomenon came home to me in a recent conversation with one of our lawyer legislators. He told me that the term "activist judge" was bantered around frequently within his caucus—worse yet he is hearing it again and again from his rural constituents. It has become a powerful negative slogan and part of the everyday vernacular.

This 24/7 drumbeat of anti-judiciary sentiment is shaping public consciousness—in large part, I believe, *because* there is no other effective voice to provide an alternative view in our cherished marketplace of ideas.

We should applaud vigorous civic discourse and the competition of ideas. They are—after all—vital parts of a healthy democracy. But, the judiciary has a long tradition of refraining from political discourse because of our adjudicative role in the resolution of individual cases. And, this tradition of restraint has not equipped us to wade into the powerful currents of the information age.

Further, it is difficult to respond to sound bites that talk of

"activist judges" or an "out-of-control" judiciary. Communicating the principles of a separate but co-equal branch of government cannot be done in simple slogans. But, nonetheless, we must communicate because as President John F. Kennedy once said, too many people "enjoy the comfort of opinion, without the discomfort of thought."

We need to respond in a meaningful and understandable way. And we must be credible.

When we stand up for judicial independence, we do not mean that we believe that judges are infallible—because we are not.

Judicial rulings and jury verdicts do not stand because they are divined.

They stand because we know that they are the product of dedicated people applying the law—as they understand it—to the best of their ability.

Court rulings stand because citizens of this great country know that a peaceful and democratic society is dependent on impartial judges and juries. And, in Minnesota, they stand because, up to now, we have had a system of judicial selection that has focused more on a judge's merit and competence and less on ideology.

In my view, the vast majority of judges do their best every day to decide cases based on the law and the facts. I am proud to be a judge, particularly in Minnesota. But we must still acknowledge that, for the profession's most celebrated moments like *Brown vs. Board of Education*, there are also darker moments like *Plessey v. Ferguson*. And can any of us say—with certainty—how history will view today's best-intentioned legal battles? Surely not.

Judges are human and the institutions humans create—that we create—will not be perfect—as human beings are not perfect. But I would argue that human fallibility and imperfection are not sufficient reasons to dismantle the very structure of the institution itself. And frankly, that is what some are calling for.

At the national level, prominent critics are describing our country's judiciary as "out of control". These and other similar views are spawning proposals for radical change at the federal level. Some suggest that judicial budgets be slashed; some would strip courts of jurisdiction; some even urge that court decisions be ignored; some would shrink or pack courts to serve their ends; and some would amend the Constitution to permit Congress to overrule judicial decisions.

These views and proposals are not mainstream, but they promote and advance the notion—now heard too often—that “all judges are activists”. We have cause to be worried.

Yet, in Minnesota, I hope and believe that this message has not yet taken root. And, we want to keep it that way. To do so, we must act.

Broad-brush attacks on the judiciary, in general, undermine both individual judges and the institution as a whole. But of much greater concern to me is the damage done to the public’s trust in our judiciary *and* the impact that *eroded trust* has on the nature of our democracy. If the attacks on judges take root, the citizens of this country will be the losers. After all, judicial independence is not for the benefit of judges; it is for the benefit of the people. And it belongs to the people.

These assaults on the judiciary and the constitutional principle of separation of powers—should give us all pause. Not just because our system of checks and balances is emulated worldwide and considered the genius behind our system of government.

Not just because a strong, independent judiciary is considered a necessary ingredient in the recipe for emerging democracies.

And, not just because deference to judicial decisions has enabled us to peacefully resolve disputes for generations. We need to be concerned because a judiciary subservient to other branches of government cannot uphold an individual’s rights against the stiff wind of popular will.

So we must enter into the debate to provide that other voice. While the debate should not and cannot be solely between the anonymous public at large and those of us who work in the courts, it still *must* include the voices of judges and lawyers. If we who are in courtrooms everyday do not fully comprehend what is at stake here, who will?

I have and will continue to speak out about this issue because of its potential impact on the future of our system of justice in Minnesota. And I will be encouraging each state judge to commit to one public engagement over the course of the next year to address the issue in whatever way he or she sees fit.

And today, I have a request of you as well. Minnesota’s bar has a vital interest in this debate. We need your ideas, your voices, and your action. I will be meeting with your president, David Stowman, and your president-elect, Sue Holden, in the coming days to discuss assembling a panel

of individuals from the bench, the bar, and the larger community who can spearhead, in a sustained way, effective efforts at educating the public about what is at stake and ensuring that a more informed debate about our judiciary takes place.

But you don’t have to be a member of this panel or any other organized effort to help. You just need to speak up. Talk to your clients, your family, and friends about what an independent judiciary means—to *them*. Remind them that cases are best resolved within a system of laws and not shifting political ideology. And that disagreement with the outcome of a few cases is not sufficient reason to dismantle an entire system.

And finally, remind them that pleasing the crowds has never been what this system strives for. Within our own individual abilities, we first aim to do right and by doing right we strive to serve the law—be it our constitution, the statutes enacted by the other two branches of government, or our own case precedent. We strive to serve the law, whether we agree with it or not, and whether you are black or white, rich or poor, Democrat or Republican, Christian or Muslim. It is this pursuit of truth and not the pursuit of what is popular—that we hope preserves the public trust in our court system.

The larger *public* in this state needs our leadership and our voices. Don’t underestimate what is at stake. And don’t underestimate the positive impact you can have as we navigate through these uncertain times. As it has been said, “the voice of one is louder than the silence of 10,000.”

Thank you.



Public Lawyers Will Find Few Major Changes In New Rules of Professional Conduct

By: Martin Cole, Office of Lawyers Professional Responsibility

In June of this year, the Minnesota Supreme Court promulgated amendments to the Minnesota Rules of Professional Conduct (MRPC), which will take effect on October 1, 2005. A complete red-lined version of the new Rules is available on the website of the Office of Lawyers Professional Responsibility at <http://www.courts.state.mn.us/lprb/05rulesredlined.pdf>. Although there are a substantial number of revisions to the rules and the comments,¹ there are only a few changes that should have a real impact on the practice of most public lawyers.

One significant change throughout the new Rules is the concept of “confirmed in writing.” Many conflicts of interest are waivable by a client. In the past, the Rules required a client to give informed consent to a conflict (or consent after consultation); the new Rules extend the requirement to add that the consent must then be “confirmed in writing.”² The Comment to Rule 1.7, MRPC (Conflict of Interest: Current Clients) helps explain the requirement as well as the meaning of informed consent:

Such a writing may consist of a document executed by the client or one that the lawyer promptly records and transmits to the client following an oral consent....If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter....The requirement of a writing does not supplant the need in most case for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.

Conflict of interest rules dealing with current clients and former clients (Rule 1.9, MRPC), both of which include the new writing requirement, apply equally to public lawyers

as they do to lawyers in private or corporate practice. One additional conflict rule, Rule 1.11, MRPC (Special Conflicts of Interest for Former and Current Government Officers and Employees), applies uniquely to public practice. Here too the new “confirmed in writing” standard will apply when seeking consent of a government agency for the participation of a lawyer who formerly served as a public officer or employee, or of a lawyer who has joined the governmental agency, in a matter in which the lawyer had personal and substantial involvement in their previous role.

Rule 1.11 also adds a new special definition for “confidential government information.” Such information basically is information gained under government authority, which the government is prohibited by law from disclosing to the public or is not otherwise available to the public. A lawyer having such information about a person acquired while a public official may not represent a private client adverse to that person if the material could be used to the person’s disadvantage.

Another rule undergoing some significant revisions is Rule 3.3 (Candor Toward the Tribunal). The term “tribunal” now has been defined as a court, binding arbitration proceedings, or a legislative or administrative agency acting in an adjudicative capacity. Rule 3.3 has been clarified by stating that a lawyer shall not make a false statement of fact or law to a tribunal, or fail to correct a material false statement previously made; by stating that a lawyer’s obligation to not offer false evidence also includes information provided by the lawyer’s client and witnesses; and by limiting the obligation to rectify false evidence only until the conclusion of the particular proceeding. Finally, in criminal proceedings, the defense lawyer’s obligation is clarified: she may not refuse to offer the testimony of her client (who desires to testify) unless she knows that the client’s testimony will be false, not just if she reasonably believes it is not truthful.

Some other revised rules to which public lawyers should devote special attention include:

- Rule 1.2 (Scope of Representation and Allocation of Authority Between Client and Lawyer) has added a

provision making clear that a lawyer's representation of a client does not constitute an endorsement of the client's political, economic, social or moral views or activities.

- Rule 1.13 (Organization as Client), clarifies a lawyer's duty to bring known organizational misconduct to the attention of higher authority in the organization. A separate Comment to the Rule for government agencies acknowledges, however, that defining the client and striking the balance between confidentiality, the public's right to know and applicable law may be different in the government setting.
- Rule 3.6 (Trial Publicity), prohibits extrajudicial statements that a lawyer should know will likely prejudice a pending criminal jury trial. The Rule also clarifies that the prohibition applies to all associated lawyers in a government agency.
- Rule 3.8 (Special Responsibilities of a Prosecutor), has added a provision regulating when a lawyer may be subpoenaed to testify before a grand jury or in

other criminal proceedings about a past or present client.

- Rule 4.4 (Respect for Rights of Third Persons), has added a new provision dealing with the inadvertent disclosure of documents, requiring the recipient of such documents to notify the sender.

There will, no doubt, be several Continuing Legal Education seminars conducted in the coming months to help introduce these and other changes to the Rules. A more thorough review of the new MRPC also is scheduled to appear in the September issue of the MSBA's *Bench & Bar of Minnesota*.

Notes

¹ The Court stated that the comments are included only for convenience and there is not court approval of their text.

² A new Rule 1.0 (Terminology) has been added to the Rules. Terms used throughout the Rules, such as "confirmed in writing" and "tribunal," are defined here.

Section News

PLS 2004-05 Year End Report

By: Dianne Ward, Co-Chair of the Public Law Section and Jay M. Heffern, Co-Chair of the Public Law Section.

The Public Law Section of the MSBA had another active year:

Continuing Legal Education: During the past twelve months the Public Law Section sponsored the following continuing legal education courses for a total of more than 19 CLE credits:

- "*DWI Practice Tips, Hot Topics and New Laws*", co-sponsored with the Minneapolis City Attorney's Office, September 10, 2004 - 3 CLE credits
- "*Selected Public Employment Topics*", co-sponsored with the Minneapolis City Attorney's Office, November 9, 2004 - 3 CLE credits
- "*Tight Times - Remembering Why You are There*", co-sponsored with the Life and the Law Committee of the MSBA, March 2, 2005 - 1 CLE credit
- "*Preparing for an Administrative Hearing*", co-sponsored with the Minnesota Defense Lawyers Association, April 13, 2005 - 1.5 CLE credits

- "*Data Practices for Public Lawyers*" and "*Working with Interpreters*", May 13, 2005 - 4.5 CLE credits (1.5 Elimination of Bias credits)
- "*Legislative Update on Data Practices Act*", June 16, 2005 - 1.5 CLE credits
- Minnesota Association of City Attorneys "*Legislative Update and Minnesota Court Interpreter Program*", June 22, 2005 - 4.5 CLE credits (2.0 Elimination of Bias credits)

Section Survey: The Section surveyed its members to better understand how to improve service to our membership. Ninety-four members responded. The survey will help guide the work of the Section in 2005-2006.

Public Law Section News: The Section continues to publish and send its members the Public Law News, the section's newsletter. The newsletter has been cited locally and nationally for its quality and content and has been noted as an example of a successful bar association newsletter. Regular features include profiles of public law offices and public lawyers, discussion of current legal issues and recent court decisions, data practices opinion indices, and notices of upcoming CLE's of interest to public lawyers. The Public Law Section distributes the newsletter

three times a year to most of its members by e-mail.

Community and Public Service: The Section continued its active involvement in the community through public service this past year. The Section coordinated a day of work on a Habitat for Humanity project. Section members and friends cooked and served meals every other month throughout the year through the Loaves and Fishes program. The Section contributed to the LRAP Program, which provides assistance with the repayment of student loans. The Section again “adopted” families for holiday gift giving last year.

Section Committees: Seven committees of the Section continued to perform the essential planning and implementation work that enables the Section to operate. The Committees include the Newsletter Committee, the Awards Committee, the Community / Public Service Committee, Data Practices Committee, the Local Government Committee, Membership Committee, and Pro Bono Legal Services Committee. The Committees offer an opportunity for Section members to become actively involved in the work of the Section. **Please contact one of the Public Law Section Co-Chairs if you would like to become involved in the work of any of the committees.**

Recognition Awards of Public Attorneys: For the tenth year in a row, the Public Law Section presented awards recognizing outstanding public attorneys and judges. The following awards were presented at the May 2005 Section CLE and annual meeting:

Douglas K. Amdahl Public Attorney Career Achievement Award:

Philip J. Olfelt, Retired, Minnesota Office of the Attorney General

Rosalie E. Wahl Judicial Award of Excellence:

The Honorable Allan W. Klein, ALJ, Minnesota Office of Administrative Hearings (retired May 4, 2005)

The Julius E. Gernes Public Attorney Award of Excellence:

Stephen L. Redding, Assistant Hennepin County Attorney

The William E. McGee Public Defender Award of Excellence:

Bradford W. Colbert, Minnesota Public Defender’s Office and Legal Aid to Minnesota Prisoners clinic at William Mitchell College of Law

The Public Attorney Award of Excellence: Public Law Office-Civil Law:

Joan D. Humes, Assistant United States Attorney, United States Attorney’s Office - District of Minnesota

The Public Attorney Award of Excellence: Government Agency:

Gail M. Olson, General Counsel, Minnesota State Colleges and Universities System

Law Students: The Public Law Section continued to work on its goal of developing relationships with law students and the local law schools. We continued to have two student representatives to the Council over the past year. They attended meetings, participated in Section activities, and provided new ideas and perspectives. Additionally, members of the Public Law Section attended receptions held at the local law schools to provide law students the opportunity to learn about the exciting work being done in public law.

Public Law Section Election Results

The results of the PLS Council elections held at the May 20, 2005 annual meeting were:

Co-chairs: Jay Heffern, Minneapolis City Attorney
Diane Alshouse, Ramsey County Public Defender’s Office (newly appointed Judge in the Second Judicial District)

Secretary: Harriet Sims, Minnesota Department of Revenue

Treasurer: Kim Buechel Mesun, Minneapolis School District

Executive Council Members:

Luci Botzek, Capitol Connections

James Fleming, 5th Judicial District Chief Public Defender

Barry Greller, Minnesota Attorney General’s Office

The Honorable Thomas Kalitowski, Minnesota Court of Appeals

The Honorable Joanne Smith, Second Judicial District Court

They will join returning Executive Council members who are serving the second year of their two-year term:

Jim Alexander, United States Attorney’s Office

Mary Miller, Minnesota Department of Labor and Industry

Louis Thayer, Hearing Appeals Officer, Minnesota Department of Human Services

Thank you to outgoing Executive Council members **Tom Frost**, **Hon. Warren Sagstuen** and **Marcy Harris**! We appreciate all of your hard work and dedication over the years. And thank you to outgoing Co-chair **Dianne Ward**. We appreciate your service on the council, especially the last two years as co-chair. Thank you for agreeing to continue to serve the PLS as the public law delegate to the MSBA Assembly.

MSBA Public Law Section Goals for 2005-2006

1. Promote Public Service and Pro Bono

- Develop a model pro bono policy for public law offices and offer implementation suggestions that address the barriers to pro bono work.
- Provide information about pro bono opportunities to public lawyers.
- Sponsor at least two public service projects in which PLS members can participate.
- Continue support of services to low-income and disadvantaged persons in Minnesota.

2. Sponsor Continuing Legal Education

- Sponsor at least 15 credits of CLE on topics of interest to PLS members.
- Continue to keep the cost free or reasonable.
- Provide Ethics and Elimination of Bias CLE's on at least a 3-year cycle.

3. Enhance Public Law Section communications

- Enhance communication among PLS members by encouraging increased use of electronic communications.
- Publish newsletters and maintain the website with current information and resources, e.g. CLE's, pro bono and public service opportunities, etc.

- Improve communication between the PLS Executive Council and the committees.
- Provide publicity on law clerk employment opportunities.

4. Work toward the goal of eliminating bias and promoting diversity in the bar

- Provide quality Elimination of Bias CLE programs.
- Participate in minority recruitment conferences.

5. Provide recognition for public service

- Continue annual public attorney awards.
- Use the newsletter and other means to recognize public lawyers.

6. Work with the MSBA

- Work with the MSBA membership committee to increase the membership of the Public Law Section and increase participation in the MSBA.
- Continue and enhance the ongoing relationship with the MSBA Student Law Section including identifying a designated student liaison with the Public Law Section.
- Respond to issues presented to the MSBA that impact public policy and the practice of public law.






PLS Member Survey Results

1. The Public Law Section holds an annual meeting each May. How often do you think the Public Law Section should meet?

	Response Total
Annually 	53
Semi-annually 	19
Quarterly 	16
Monthly 	2
Other, please specify: 	1

The meetings in the metro do not help the out-of-metro folks.

2. Which of the following would you like to see in the format for the meeting?

	Response Total
Round table discussions 	44
Keynote speaker 	48
Panel presentations 	62
Networking time 	28
Other, please specify: 	3

Specific breakout sections - topic specific (2)
Hot topics (1)

3. Have you ever attended one of these seminars?

Yes		Response Total 62
No		30

4. If you answered no, what has prevented you from attending?

Total Respondents
28

Egs. - Not a member of the section in the past, do not need CLE credits, not a federal topic, geography, scheduling, job commitments, just joined the section

5. What suggestions do you have for topics or speakers for the upcoming year?




Total Respondents
28

Egs. - Eminent domain, local government issues like pay equity, zoning, arbitration, federal topics, sentencing practices since *Blakely*, criminal topics, DWI changes, wetlands preservation, employment law, open meeting law, record retention, public purchasing/procurement laws.






6. Have you read the section newsletter in the past?

Yes		Response Total 88
No		6

7. How often should the newsletter be published?

6 times a year		Response Total 15
4 times a year		51
3 times a year		22
Discontinue		2
Other, please specify:		2
3 or 4 times a year (1)		
Monthly (1)		

8. What topics would you like to see covered in the newsletter?

Updates on key public law issues		Response Total 91
Law review quality articles		25
Announcements of upcoming events of interest to public law practitioners		72
Practice tips for public law practitioners		79
Other, please specify:		12

Public law office and public lawyer profiles, legislative update and issues, people on the move, case reviews, jobs for students, articles about individual public law practitioners - what they do and why they have chosen public law.

9. In what format should the newsletter be published?

Electronically		Response Total 54
Paper		5
Both		32

10. How important is it that the Section participate in community activities?

		Response Total
Very Important		31
Somewhat important		44
Not important		17

11. Do you have any suggestions for community projects for the Section?

Total Respondents
9





Take projects outside of twin cities, projects that advocate literacy and encourage reading, disaster relief, projects that partner with community groups, Habitat for Humanity, Dorothy Day Food Shelf, Toys for Tots.

12. Do you have any suggestions for committee projects or activities?

Total Respondents
7

Local government committee to identify hot local government topics, outreach to greater Minnesota attorneys, joint activities of MCAA, participate in Constitution Day at schools.

15. Please check any other activities you think should be Section events or activities?

		Response Total
Annual social event		28
Monthly luncheons		15
Judicial evaluations		23
Other, please specify:		4

Real time email messages about significant new developments (1)
Quarterly luncheons in conjunction with public law program (3)

2005 Annual Meeting CLE

As part of its annual meeting on May 20, 2005, the PLS sponsored two CLE sessions.

Data Practices: The morning session featured a legislative update by Laurie Beyer-Kropuenske, Director of the Information Policy Analysis Division of the Minnesota Department of Administration. In addition, Corrine Thomson of Kennedy & Graven presented useful information for responding to data requests. Tony Palumbo, Assistant Anoka County Attorney provided a riveting update on recent data practices cases. And David Orren, a staff attorney with the Minnesota Department of Health, enthralled the audience with tips on data security issues in the computer data age. This part of the CLE was approved for 3.0 CLE credits.

Court Interpreters: The afternoon CLE session featured a presentation about standards and use of court interpreters. The presenters were Child Support Magistrate Luz Frias and Katrin Johnson. Ms. Frias serves the Second and Fourth Judicial Districts in Minnesota. She also serves as a Hearing Examiner for the Shakopee

Mdewakanton Sioux Community. She is an experienced mediator and frequent lecturer on the issues of diversity within the courts; diversity issues in the mediation process; cross-cultural negotiation issues and the use of interpreters within the legal system. Ms. Johnson is the Coordinator of the Minnesota Court Interpreter Program at the State Court Administrator’s Office. She is responsible for the regulation of interpreter use in all Minnesota state courts. She speaks three languages and has an extensive background working with interpreters primarily in criminal court matters.

The presentation on the standards for the use of court interpreters was 90 minutes long. It focused on the need to educate public sector attorneys to better understand the court standards for interpreters. The public sector attorneys, in turn, can then improve the practice of law by ensuring that legal documents and legal arguments are better understood by legal parties for whom English is not their primary language. The presentation qualified for 1.5 Elimination of Bias credits.

Public Law Section CLE

At The State Bar Convention In Brainerd

The Public Law Section presented a 1.5 credit CLE on Data Practices for Public Lawyers on June 16, 2005 at the MSBA Convention in Brainerd. Laurie Beyer-Kropuenske, Director of the State Information Policy Analysis Division,



Laurie Beyer-Kropuenske, State Information Policy Analysis Division



David Orren, Minnesota Department of Health

Corrine Thomson, Kennedy and Graven, and David Orren, Minnesota Department of Health once again provided very useful information to the convention audience as they had done at the May 20th annual meeting CLE.



Corrine Thomson, Kennedy and Graven

Notes On MSBA Assembly Meeting

Friday, June 17, 2005

By Mary Miller, Minnesota Department of Labor & Industry

Memorials from the past year were recognized.

Annual Meeting of the Minnesota State Bar Foundation Report.

Grants issued from Foundation funds were listed. Most funds are from the MSBA membership dues statement check off. 57% of the funding amount goes to various projects involving legal assistance to disadvantaged persons.

Assembly Meeting

The MSBA Presidents Awards went to Karna Peters and Timothy Kuntz. The Professional Excellence Award went to Charles Lundberg. Recognition was given to Outgoing Assembly Members. A plaque was prepared for each, including the Public Law Section's representative, Marcy Harris.

Routine Business

The President's report included the obtaining of funding for Legal Services and public defenders, and other legislation that passed, and the Pro Bono project. Those who assisted in those efforts were thanked.

An ABA report was presented by Fred Finch. He reported that the ABA is asking Minnesota to protest the changes proposed to ABA governance structure. Since their proposed changes are similar to the ones that the MSBA just made, no action was recommended. No motions were made.

Assembly Committee Reports included reports from the following committees:

Elections/Appointments, General Policy, Governance, Legislative, and Operations.

Consent Calendar.

Actions approved as part of the consent calendar included the approval of the April 15, 2005 General Assembly meeting minutes and the schedule of meetings for the coming year: September 23, 2005 – noon, December 9, 2005 – noon, April 21, 2006 – noon, and Convention – noon.

Action Calendar

The following officers were elected for the Association for fiscal year 2005-06:

President Elect – Patrick Kelly, Treasurer – Brian Melendez, and Secretary – Michael Ford.

The following Recommendations of the Elections/Appointments Committee were approved:

1. Election of At-large Assembly Representatives to the Council – Judge Ed Cleary, Lorie Gildea, and Judge George Perez.
2. Election to the Central Minnesota Legal Services Board of Directors – Carol Klaphake.
3. Amendments to the Constitution of the Lawyers Public Affairs Commission

There was discussion of the proposal that attorneys in private practice register whether they do or do not carry professional liability insurance and the carrier.

On the Petition of Members and the Recommendation of the Human Rights Committee, there was a vote to support the Resolution that the MSBA should address the increasing attacks on the Judiciary.

On the Petition of Members and the Recommendation of the Human Rights Committee, there was a vote to support the Resolution that the MSBA should affirm the legal profession's commitment to civil liberties.

New Business

A proposal to also hold the next two years' conventions at Maddens was referred to the Council for proposal.

The Passing of the Gavel to Susan Holden (with much appreciation to David Stowman) occurred. Susan reported that goals for the next year include responding to unfair criticism of judiciary, etc. On diversity an internship program will be implemented and self audit of law firms will include race. Legislatively the MSBA will provide input in our member expertise areas. Outreach to Districts will be a focus, with regional meetings with Bar leaders to occur.

Notice was given of openings for nominations on various Board positions that will be voted on at the September meeting of the Assembly.

The meeting was adjourned.

2005 City Attorneys Legislative Update

By: Eileen Wells, Mankato City Attorney

The 2005 City Attorneys Legislative Update was held on Wednesday, June 22, 2005 at the Four Points Sheraton in St. Paul. The morning provided the traditional legislative and judicial update presented by Laura Offerdahl, Ann Higgins and Craig Johnson, League of Minnesota Cities (LMC) staff members. A Criminal Law update was presented by Jessica S. McConaughey of the St. Paul City Attorney's Office.

Though the 2005 Legislature was still in session at the time of the Update, several legislative changes affecting cities had been approved and were included in the presentation. Discussions included changes to the Local Government compensation limit (Chapter 169) and the Omnibus state government finance bill (Chapter 156), affecting public websites and publications, policies regulating out-state travel by elected officials and local government employee salary reporting. The speakers also

alerted members of the new state pipeline safety rules (Minnesota Rules chapter 7560) that impose a significant duty on cities to provide information about the location of private water and sewer services located in public rights-of-way.

The Omnibus Crime bill (Chapters 83 and 136) made significant changes to the criminal law statutes. They include clarification of definitions of Domestic Abuse No Contact Orders; creating a new offense of fleeing a police officer by means other than a motor vehicle; expanded definitions in falsely reporting a crime; changes in the prosecution venue of harassing letters or packages; repeal of the vagrancy statute (Minn. Stat. § 609.725); reenactment of the Personal Protection Act of 2003 (Minn. Stat. § 624.714); and restoration of the Implied Consent Law (Minn. Stat. § 169A.53, subd. 3).

Susan Naughton, LMC Staff Attorney, presented the Judicial Update. Several cases were discussed regarding land use, official immunities and fees. Many of the attorneys trying and arguing the cases were in the audience to provide additional insight.

In an attempt to increase participation and meet the needs of the membership, this year's Update was expanded to include a session that fulfilled the Elimination of Bias CLE credit requirement. The MSBA Public Law Section, in cooperation with Government Training Services planned and organized the presentation. An entertaining and informative session regarding the use of interpreters was

presented by Katrin Johnson, MN Court Interpreter Program Coordinator and Ka Yang, Ramsey County Court Operations Supervisor. They shared valuable suggestions for finding and working with interpreters in the courtroom and in other circumstances. Participants were encouraged to use the Court Interpreter Program website <www.courts.state.mn.us/interpreters> to find additional information.

The Minnesota Association of City Attorneys will meet again for the 2006 Annual Educational Conference February 3 and 4, 2006 at Hotel Sofitel in Bloomington. All public lawyers are welcome

Eyes On The Courts

By: Greg Brooker, Assistant U.S. Attorney

What follows is a summary of federal and state court opinions issued in the last few months that may be of interest to lawyers practicing public law in Minnesota.



hard to train old ladies.” Peterson complained to Scott County officials regarding the sex- and age-related comments. Within 60 days of the complaint, Peterson was terminated.

Public Employment Law:

Peterson v. Scott County

No. 04-2531

Eighth Circuit Court of Appeals

May 6, 2005

At the age of 51, Sheila Peterson applied for a correctional position with the Scott County Sheriff's Department. She had nine years of experience as a correctional officer and met the minimum qualifications of the position. Three male applicants under the age of 40 also applied for the job, and the County initiated background checks on all four applicants. The three male applicants were offered full-time positions before their written background checks were completed by the County. Peterson was offered only an intermittent position and only after her background check was completed. Peterson later applied twice for promotions to full-time positions, and each time the County failed to promote her. In one case, the County initially offered the promotion to a male who did not meet the minimum qualifications. The County revised the qualifications to include military experience and the male was promoted over Peterson. When Peterson started working at Scott County, her supervisor repeatedly called her an “old lady.” He also told her that she “didn't have the right parts” to take on additional shifts of work. When Peterson asked to be included in training on booking inmates, her supervisor refused, saying that it “was too

Peterson brought suit under Title VII of the Civil Rights Act, the Age Discrimination in Employment Act, and the Minnesota Human Rights Act, alleging age and gender discrimination in failing to hire and promote; hostile work environment; and retaliation. The U.S. District Court granted summary judgment to the County, and Peterson appealed.

The Eighth Circuit Court of Appeals reversed on the age and gender discrimination claims as well as the retaliation claim, but affirmed the summary judgment to the County on the hostile work environment claim. The appellate court held that “a defendant is not entitled to summary judgment if the plaintiff has sufficient evidence that unlawful discrimination was a motivating factor in the defendant's action even if the defendant has brought forward evidence of additional legitimate motives.” In reviewing the record *de novo*, the court of appeals concluded that Peterson met her prima facie burden on her failure-to-hire and failure-to-promote claims. It noted that a reasonable jury could infer that Scott County modified the application process for the male applicants but not for her. “Evidence of a changing hiring process and fluid standards for applicants, taken together with the defendant's evolving explanation of its hiring decision, would allow a reasonable jury to infer that the County's explanation is a pretext for unlawful discrimination.” With regard to the retaliation claim, the court of appeals said if Peterson's version of the events is accepted, a jury could reasonably find that the decision to

terminate her was prompted by her complaint of harassment. Summary judgment to the County was affirmed on the hostile work environment claim because the comments Peterson received were isolated incidents and teasing which cannot rise to the level of harassment under Supreme Court case law. The case was remanded for trial on all claims but the hostile work environment claim.

Police Liability:

***Hyatt v. Anoka Police Dept.*
Minnesota Court of Appeals
No. A03-1707
July 19, 2005**

Lena Hyatt sued the City of Anoka and its police department under the state “dog bite” statute, Minn. Stat. § 347.22. The City moved for summary judgment. The district court denied the City’s motion, but the Minnesota Court of Appeals reversed, concluding that application of the dog bite statute to police dogs would lead to an “absurd result” because such an application would conflict with another state statute that allows police to use reasonable force. The Minnesota Supreme Court granted further review and reversed, holding that the plain language of the dog bite statute does not exempt police dogs. The state high court, however, remanded the case to the court of appeals to consider the City’s alternative claims of immunity and whether the Anoka Police Department is a legal entity subject to suit.

On remand, the Minnesota Court of Appeals first held that municipal departments do not have statutory authority to sue and be sued like municipal corporations. Thus the Anoka Police Department was dismissed as a party to the case. The appellate court then considered the City of Anoka’s argument that its decision to own and use police dogs was a discretionary act entitled to statutory immunity under Minn. Stat. § 466.02. The court rejected this argument. Although the city’s liability depended partially on its decision to own police dogs, the claim of plaintiff, the court said, challenges the conduct of the police officer and his decision to release the police dog toward plaintiff, not a city council’s decision to have police dogs as part of its law enforcement scheme.

Vicarious official immunity did, however, apply to shield the city from suit, the court held. The officer’s decision to release the police dog, which resulted in injury to plaintiff, was a discretionary act by a government official protected by the common-law doctrine of official immunity. “The city had policies regarding the use of force and the use of police dogs, and the immunity extended to the officers for their discretionary decisions involving those policies

extends to the city,” the court held.

***Hayes v. City of Brooklyn Park*
U.S. District Court for Minnesota
No. 04-196
May 4, 2005**

On January 30, 2002, Martha Jean Hayes, a 59-year-old woman, was stopped by a Brooklyn Park Police Sergeant for traveling through a red light. The traffic stop was fully recorded in audio and video by a camera located in the squad car. The sergeant was informed that Hayes had an outstanding warrant for driving without a license. Hayes denied that her license had been cancelled and denied ever having driven after cancellation. Two other officers arrived on the scene about the time the sergeant told Hayes that there was an active warrant for her arrest and that she needed to step out of the car. Hayes became agitated and refused to leave the car. After repeated requests for her to step out of her car, the officers began to forcefully remove Hayes from the vehicle. She was eventually pulled from her car and taken to the pavement. The video from the squad car shows Hayes repeatedly cursing at the officers while she refused to obey their commands to stand up. The officers eventually pulled Hayes to her feet and escorted her to the squad car. During a pat search of Hayes, the sergeant was struck in the chin by Hayes’ right elbow and kicked in his left leg. The video shows the sergeant cursing at Hayes not to “f—ing hit” him and the sergeant thereafter forced Hayes down onto a snow bank. Once on the snow bank, Hayes claimed that the sergeant twisted her arm and kicked and beat her. Later, while being booked, Hayes became sick, fainted, and fell backwards to the floor. With the help of a nurse, the booking officer got Hayes to sit upright. Hayes cried out that her arm hurt. At the hospital, Hayes was diagnosed with a fractured arm. Hayes ultimately pled guilty to a misdemeanor charge of resisting arrest.

Hayes sued the City of Brooklyn Park, alleging excessive force in contravention of her Fourth Amendment rights. The city moved for summary judgment. The U.S. District Court (the Honorable Ann D. Montgomery) granted the city’s motion. The court relied extensively on the video and audio of the arrest in concluding that Hayes arm was not broken at the time the officer forced her down to the snow bank but rather in an accidental fall during the booking process.

The court also found that Hayes failed to timely respond to a request for admissions. Pursuant to Federal Civil Procedure Rule 36, each matter for which an admission was requested was deemed admitted, including that Hayes “resisted efforts to remove her” and that “she broke her arm when she fell at the jail.” The court held that, as a

matter of law, the officer did not use excessive force in removing Hayes from her car after she refused to obey their orders to remove herself and that they did not use excessive force in transporting her to the squad car since she continued to resist the arrest.

Land Use:

***Minnesota Towers v. City of Duluth*
U.S. District Court for Minnesota
Civ. No. 04-5068
July 1, 2005**

Cellular One determined that it needed to build a new telecommunications tower to serve the Piedmont Heights neighborhood of Duluth, an area that had many coverage gaps due to its hilly terrain. Cellular One desired to build the 195-foot tower on land that was zoned “Highway Commercial” but surrounded by many residential properties. On September 29, 2004, it filed an application with the city for a special use permit for the construction of the tower, but the application engendered vocal neighborhood opposition. Minnesota has an automatic approval statute that requires a city to act on an application within 60 days of its filing unless the deadline is extended. See Minn. Stat. § 15.99. On October 22, 2004, the city planner sent a letter to the applicants extending the deadline, but he did not make a hard copy of the letter he sent and the applicants denied ever having received it. On November 9, 2004, after two public hearings, the Duluth Planning Commission recommended approval of the special use permit. On November 22, 2004, just days before the expiration of the 60-day time limit, a resolution approving the tower permit was voted down by the city council. In a letter to the applicants the following day, the city attorney viewed the council’s vote as a denial of the permit. At its next meeting on December 6, 2004 – after the 60-day period had run — the city council considered another resolution that ratified the denial of the special use permit and detailed the council’s findings for the denial.

The permit applicants sued, contending that city violated the automatic approval statute by not denying the permit within 60 days of the filing of the application. The plaintiffs also alleged that the city violated the Telecommunications Act of 1996, 47 U.S.C. § 332, when it wrongfully denied the tower permit on December 6. Following discovery, the plaintiffs moved for partial summary judgment.

The U.S. District Court (The Honorable Donovan Frank) refused to grant summary judgment to the plaintiffs. The court first considered application of the 60-day approval statute. The plaintiffs argued that the failure of the city council to deny its application prior to the 60-day deadline meant that the permit was automatically approved. The

city argued that the city planner had in fact sent a letter extending the 60-day deadline. In an affidavit to the court, the planner stated that when he reprinted the extension letter off his computer the auto-date function automatically changed the date of the letter and that he did not have a hard copy of the letter he signed. The court held that material fact issues warrant a trial on whether there was in fact an extension of the 60-day requirement. The court held that if the 60-day requirement had not been extended, the city council’s vote that failed to adopt the planning commission’s resolution to approve the permit, accompanied by the city council’s oral reasoning on the record, was not sufficient to comply fully with the statute. The statute, the court said, addresses what constitutes a denial, but does not obviate the need for the city to provide a written statement documenting the reasons for the denial prior to the expiration of the sixty days. The court held that the written findings by the city council were made after the 60 days and the city attorney letter, which was before the 60 days had expired, does not constitute official action by the council.

The applicants also moved for summary judgment on the federal claim that the city’s denial of the wireless communications tower violated the Telecommunications Act. That Act requires that any state or local decision to deny a request to construct personal wireless service facilities must be in writing and supported by substantial evidence contained in the record. In its written findings, the City of Duluth determined that the height of the tower in close proximity to neighboring homes created a hazard and that the 195-foot tower would not blend into the surrounding area. The court found that the record contained substantial evidence to support the city council’s findings. Thus, it denied the applicants’ summary judgment motion and affirmatively found that the federal law had not been violated. The court held the case over for a jury trial. The sole issue for the jury at trial, the court noted, will be whether the permit should be automatically approved under the 60-day automatic approval statute.

***Berne Area Alliance for Quality Living v. Dodge County*
Minnesota Court of Appeals
No. A04-1287
April 12, 2005**

Mark Kinstuen applied to Dodge County for a conditional use permit and other permits to operate a large hog feedlot. His feedlot proposal was to have the capacity for more than 1,000 animal units, although it would be used, at least initially, to house only 995 animals under the proposed permit. The neighbors opposed Kinstuen’s application. Dodge County determined that Kinstuen did not need to

prepare an environmental impact statement (“EIS”) and granted the permit. The neighbors sued the county, contending that the state pollution control agency (“MPCA”) and not the county should have been the responsible government unit to make the environmental declaration, but that in any case an EIS was required for the proposal. Some time after the neighbors commenced suit, the Minnesota Legislature amended the environmental-review statute to exempt from environmental review all feedlots with a capacity of fewer than 1,000 animal units. The district court ruled that because Kinstuen’s proposal was for a feedlot that had the capacity to exceed 1,000 animal units, the new statutory exemption did not apply. The district court held, however, that the county was the proper responsible governmental unit under the environmental review statute and ruled that the county’s negative declaration regarding the need for an EIS was not arbitrary and capricious. The neighbors appealed.

The Minnesota Court of Appeals first held that the new statute exempting from environmental review any feedlots with a capacity of fewer than 1,000 animal units did not apply. The appellate court noted that the legislature did not define “capacity” in the statute. The county argued that “capacity” is measured by the actual number of animal units that may, under the relevant permits, be housed in the proposed project (i.e., legal capacity). The neighbors contended that “capacity” in the statute is measured by the number of animal units that the proposed project can actually accommodate (i.e., physical capacity). The appellate court concluded that the “capacity” for determining whether a proposed project is exempt from environmental review under Minn. Stat. § 116D.04 is the physical capacity of the proposed feedlot. Because the physical capacity of Kinstuen’s proposed feedlot exceeded 1,000, it was not exempt from environmental review. The appellate court thus had to reach the other question presented: under the environmental review process, was the county or the MPCA the proper responsible governmental unit?

The court of appeals held that, under the applicable feedlot rules, Dodge county was to forward to the MPCA all animal feedlot permit applications in certain categories, including feedlot or manure storage areas “capable of holding 1,000 or more animal units or the manure produced by 1,000 or more animal units.” The appellate court noted that, although Kinstuen’s proposed animal feedlot will only house 995 animal units under the proposed permit, it is physically “capable of holding” more than 1,000 animal units. Under these rules, the county lacked the authority to issue permits to Kinstuen and was required to forward his application to the MPCA.

Environmental Law:

Lyon County v. EPA

No. 04-2689

Eighth Circuit Court of Appeals

May 9, 2005

Lyon County owns and operates a landfill near Lynd, Minnesota. In 1994, officials of the Minnesota Pollution Control Agency (“MPCA”) conducted an asbestos compliance inspection of the landfill and found ripped bags with asbestos lying uncovered from which dust was blowing. The following day, the inspectors returned and found that the area had been partially covered with dirt, but they again found ripped plastic bags of asbestos labels on the surface of the landfill, including some bags they had not seen the previous day. Samples were collected from the bags and surrounding area. The MPCA attempted to negotiate a settlement with the County but eventually referred the matter to the EPA for enforcement. After further unsuccessful negotiation, the EPA filed an administrative complaint against the County alleging the violation of several federal environmental regulations. An ALJ found the County liable on all counts and imposed an administrative penalty of \$45,000. Lyon County appealed to the Environmental Appeals Board. The Board affirmed liability for permitting visible emissions of asbestos, failing to maintain waste shipment records, and excavating asbestos without notifying the EPA, but reversed on the counts relating to maintaining updated maps and diagrams of asbestos waste. It reduced the fine to \$18,800. Lyon County appealed to the U.S. District Court (the Honorable Joan Ericksen). The district court affirmed the Board’s decision, and the County appealed to the Eighth Circuit.

On appeal, the County argued that the EPA did not prove that there were visible emissions to the outside air under the regulation that required each landfill operator to ensure that there are not visible emissions from asbestos-containing waste material. The Eighth Circuit, however, found the County’s contention that the material could not have been the source of the visible emissions contrary to both the record and the regulations. The court also held that the fine imposed by the ALJ was not excessive, given the ALJ’s conclusion that there was a significant potential for harm in this case because of the mishandling of asbestos by a landfill that received a significant amount of asbestos each year.

Public Attorneys on the Move

Mary Al Balber has joined the Minneapolis City Attorney's Office. Formerly Mary Al worked as an Assistant Minnesota Attorney General and as Assistant General Counsel for the Prairie Island Dakota Community and Solicitor General for the Mille Lacs Band of Ojibwe Indians.

Harriet Sims has been appointed to the Minnesota Client Security Board replacing **Margaret Westin** who had served on the Board the last six years, most recently as Chair of the Board.

Announcements

The Minneapolis School District General Counsel's Office announces that Minneapolis South High School representing Minnesota as its state champion took 4th place in the nationwide mock trial competition held in Charlotte, North Carolina on May 6-8, 2005. This is the third time South has represented Minnesota in the last six years and the first time they have been in the top ten national finishers. The six-member team (Senior Jaime McClellan, Junior Simi Kang, Sophomores Camille Mefleh, Samantha Sencer-Mura, Jen Walker and Freshman Dusan McEvoy) had the smallest squad in the national competition and finished behind California, Hawaii and Arizona. Kang and McEvoy won individual awards for performances as witnesses and Mefleh and Sencer-Mura for their attorney performances. The team was coached by attorneys Randy Thompson, Pat Yoedicke and John Borger and teachers Phylis Hayes and Gerry Nolting. Congratulations South!

Beginning September 15, 2005, the Federal Court will hold all in-custody criminal matters in the Minneapolis Courthouse, located at 300 S. 4th Street. St. Paul Judges and Magistrate Judges will travel to Minneapolis to conduct in-custody matters. All Magistrate Judges will use Courtroom 8 East for arraignments, initial appearances, detention hearings, and other preliminary criminal matters. The St. Paul District Judges will use a variety of Minneapolis courtrooms for in-custody hearings, trials, and sentencing. The in-custody criminal matters will be held in Minneapolis until the St. Paul Courthouse re-opens.

If you have an announcement or moves you would like to include in the PLS Newsletter, contact Kim Buechel Mesun at <Kim.Mesun@mpls.k12.mn.us>.

News From the Bench

The Honorable **Susan Richard Nelson**, Magistrate Judge for the District of Minnesota, is the recipient of the 2005 Minnesota Women Lawyers (MWL) Myra Bradwell Award. Each year, the Myra Bradwell Award is presented to a MWL member who expresses the highest ideals of the legal profession. Nelson received the award at the MWL annual meeting on June 23, 2005.

Governor Pawlenty appointed **Diane R. Alshouse** and **Robert A. Awsumb** to two Second Judicial District trial court bench vacancies in Ramsey County. The first vacancy occurred with the Supreme Court's conversion of a vacant referee position into a district court judgeship. The second vacancy occurred as a result of the resignation of the Honorable Louise Dovre Bjorkman on April 8, 2005.

Diane Alshouse was a managing attorney in the Ramsey County Public Defender's office in St. Paul. She had been an assistant Ramsey County public defender since 1985,

except from 1997 to 1998, when she was an assistant county attorney in the Hennepin County attorney's office in Minneapolis. Alshouse earned her juris doctorate degree from Hamline University School of Law in St. Paul in 1984, and her bachelor of arts degree from Luther College in Decorah, Iowa in 1970. Alshouse is a member of the Minnesota State Bar Association (MSBA), the Ramsey County Bar Association (RCBA), and the Minnesota Association of Criminal Defense Lawyers. She currently serves as Co-chair of the Public Law Section Executive Council. She has also served on the RCBA's Ethics Committee. Alshouse volunteers for United Hospital Companion Animal Assisted Therapy, and Last Chance Forever, a birds of prey conservancy. She is a member of the White Bear Area Choral Association, the Women of Today Service Club, and was president of the Como Zoo docents as well as chair and founder of Como Zoo's Nature Walk Program. Alshouse, 57, resides in Roseville.

Robert Awsumb was the chief manager, attorney and mediator with R.A. Awsumb and Associates in St. Paul, a position he has held since 1998. He has also been an adjunct professor at William Mitchell College of Law in St. Paul since 1993. Awsumb was the president and founding attorney of Rambow and Awsumb in Bloomington from 1991 to 1998 and an attorney with the Minneapolis law firm of Rider, Bennett, Egan and Arundel from 1986 to 1991. Awsumb earned his juris doctorate degree from William Mitchell in 1986 and his bachelor of arts degree from the University of Minnesota in 1982. Awsumb is an approved Alternative Dispute Resolution neutral, a member of the American Arbitration Association, the American, Minnesota State, and Ramsey County Bar Associations (RCBA), and is a member of the RCBA Board of Directors. He is an associate member of the Association of Trial Lawyers of America and the Minnesota Trial Lawyers Association. He holds Martindale-Hubbell Law Directory's preeminent rating, and has been rated a "Super Lawyer" by Minnesota Law and Politics every year since 2000. Awsumb is also a trustee for the Friends of the St. Paul Public Library, volunteers for the Greater Twin Cities United Way, and is a member of the Northern Star Council of the Boy Scouts of America. Awsumb, 45, resides in St. Paul with his wife and son.

Governor Pawlenty appointed **Lorie S. Gildea** to a Fourth Judicial District trial court bench vacancy in Hennepin County. The vacancy occurred with the retirement of the Honorable Myron S. Greenberg on March 1, 2005. Gildea is an assistant Hennepin County attorney, a position she has held since 2004. She was associate general counsel for the University of Minnesota from 1993 to 2004, and an associate attorney with the law firm of Arent Fox in Washington, DC from 1986 to 1993. Gildea earned her juris doctorate degree *magna cum laude* from Georgetown University Law School in Washington, DC in 1986 and her Bachelor of Arts degree from the University of Minnesota in 1983. Gildea is a member of the Minnesota State Bar Association and serves on its Executive Council, Board of Directors, and Civil Litigation Governing Council. She had also been a member of its Diversity Committee. Gildea is also a member of the Hennepin County Bar Association, serving on its Board of Directors. She has also been a member of the Minnesota Sentencing Guidelines Commission, MINNCOR Industries Advisory Board, and the YWCA of Minneapolis Board of Directors. Gildea, 43, resides in Minneapolis with her husband.

Governor Pawlenty appointed **Douglas A. Fuller** and **Judge Terri J. Stoneburner** to the Board on Judicial Standards. Both are appointed to four-year terms that expire on January 5, 2009. Fuller, of Bemidji, is the human resource, facilities, and acting service manager with Bemidji and

Park Rapids Chrysler Centers. He was a member of the Minnesota House of Representatives from 1999 to 2005, and served on the Judiciary Policy and Finance Committee during that time. Fuller replaces Cyndy Brucato as a public member. Stoneburner, of Little Canada, has been a judge of the Minnesota Court of Appeals since 2000, and was a Fifth Judicial District trial court judge in Brown County from 1990 to 2000. Among the committees she currently serves on is the Committee for Peer Support and Stress Reduction. She also served on the Minnesota District Judges Association Judicial Evaluation Committee while she was a district court judge. Stoneburner replaces Judge Bruce Willis as a member of the board who is a judge of the Court of Appeals. The Board on Judicial Standards investigates allegations of misconduct by Minnesota judges and referees and recommends discipline to the Minnesota Supreme Court, including censure, suspension, retirement or removal of judges. The board consists of 10 members appointed by the Governor, including one judge of the Court of Appeals, three trial court judges, two attorneys with at least 10 years of experience in the state and four public members.

Administrative Law Judge George Beck recently retired from the Minnesota Office of Administrative Hearings. Beck served as an Hearing Examiner and ALJ for 32 years. He received the PLS Rosalie E. Wahl Award for Judicial Excellence in 2001.

The Honorable Raymond Erickson was selected to be the new Chief Magistrate Judge for the Minnesota Federal District Court effective September 21, 2005. He will replace the Honorable John Lebedoff who is retiring. Erickson was first appointed as a federal magistrate in 1992 and reappointed in 2000. Magistrate Judge Erickson is located in Duluth.

Jeanne J. Graham has been appointed to the position of U.S. Magistrate Judge for the District of Minnesota and will be sworn in on September 28. She will replace retiring Magistrate Judge Jonathan Lebedoff. Graham will have her judicial chambers in St. Paul. Graham will be leaving her current assignment as a Judge in Hennepin County District Court. As a district court judge she served as co-chair of the Children's Justice Initiative, presided over cases involving the federal Indian Child Welfare Act, and helped manage the large trial docket in Hennepin County. Before being appointed to the bench she was an Assistant United States Attorney. Graham, 47, is a graduate of Gustavus Adolphus College and William Mitchell College of Law. She will join Magistrate Judges Franklin Noel (Minneapolis), Raymond Erickson (Duluth), Arthur Boylan, Susan Richard Nelson and Janie Mayeron (St. Paul) and part-time Magistrate Judge Mary Kay Klein (Bemidji).

Memorial For John Speakman (1939 - 2005)

By: Janice Allen, Chief Attorney, Anoka County Attorney's Office

John R. Speakman, 1997 recipient of the public law section's Julius E. Gernes Public Attorney Award of Excellence died on May 9, 2005, at the age of 66. After 20+ years in private practice, Speakman worked in the Anoka County Attorney's Office from 1989 until his death. "He was a deeply compassionate man who cared enormously about people," said Anoka County Attorney, Bob Johnson.

John's legacy will live on through the many law clerks and colleagues he mentored, sharing his wisdom and experience, gently guiding them towards a better understanding of human relationships. Jennifer Peterson, Assistant Isanti County Attorney, recalled, "He cared about me both professionally and personally. He taught me not to be ashamed of my mistakes but to learn from them and move forward." Francine Mocchi, Anoka County, counts herself among those fortunate to have worked with John. He taught her that "you can know every black letter rule that there is in the law, but if you don't understand people, you won't have the tools to put those rules to work." John taught Dawn Falenschek-Sieber, Assistant

Anoka County Attorney, to step back and examine a situation from multiple perspectives. She spoke of John's ability to put people at ease and of his skill at resolving disputes in a manner that would provide a "win-win" result for all participants.

John held leadership positions in a number of community organizations, including Mediation Services for Anoka County (Chairman 1996-1998), Lawyers Concerned for Lawyers (Chairman 1996-1997), Judicare (founder and board member since 1979), Minnesota Family Support and Recovery Council (President 2000-2001), Anoka County Bar Association (fee arbitration chair) and the Minnesota Bar Association.

In his free time, John was an avid bicyclist. He participated each year in the bicycle ride sponsored by the MSBA Life & the Law Committee to benefit Lawyers Concerned for Lawyers and other causes. It is a fitting tribute that the June, 2006 bicycle ride will be dedicated to John's memory.

Public Law Section Public Service Projects

By: Nancy McLean, Chair, PLS Community/Public Services Committee

HABITATFORHUMANITY

The Public Law Section continued its public service commitment by volunteering for Habitat for Humanity and working on a new development in Golden Valley on a blustery Friday, April 22, 2005.

LOAVESANDFISHES

The PLS prepared its famous Tater Tot Hot dish for more than 500 people for the Loaves and Fishes program at Holy Rosary Church in Minneapolis on June 1 and August 3, 2005. Judges, lawyers, friends, and family helped with cooking, cleaning and serving the meals.

NEEDVOLUNTEERS

We are scheduled for Loaves & Fishes on Wednesday October 5 and Wednesday December 7, 2005. We need volunteers to help prepare and serve the meal, starting at 2:45 and finishing by 7:00 pm. There are two shifts available: 2:45-5 and 5-7. Holy Rosary Church is located at 2424 18th Avenue South in Minneapolis.

Please contact Nancy McLean at Nancy.McLean@co.hennepin.mn.us for more information or to volunteer.

ADOPT A FAMILY

For the last several years, the Public Law Section has purchased gifts and food for families during the holiday season. This year we will continue that tradition and try to increase our giving by adding five more families to the 16 we worked with last year. We worked with Lutheran Social Services/Catholic Charities Adopt a Family Program, Cornerstone (domestic violence shelter), the Minneapolis Public Schools Teen Parent Program and individual families identified by volunteers.

By early to mid-November, we will need to commit to the number of families we will support. While that commitment is somewhat risky, the generosity of the section members, friends, and families has always carried the day. Generally, the gifts must be delivered by December 10. There are many ways to volunteer:

1. "Adopt" a family. This option involves shopping for the family members, wrapping the gifts, providing a food gift certificate, and delivering the gifts to the agency or drop off spot.
2. Join with colleagues, friends, or family members in adopting a family or two.
3. Offer a financial contribution (Nancy McLean will collect these funds and shop for gifts or food gift certificates).
4. Offer assistance. This option has worked well for kids doing community/volunteer service. The most

common help is wrapping and/or delivering gifts.

Offices, agencies, and other groups can join together to volunteer. For example, several divisions of the Hennepin County Attorney's Office have posted the lists of family members and employees have signed up to purchase gifts. Some employees had children, friends and/or neighbors who volunteered to wrap or deliver.

If you are interested in participating and/or want additional information, please contact Nancy McLean at Nancy.McLean@co.hennepin.mn.us.

Habitat For Humanity April 22, 2005



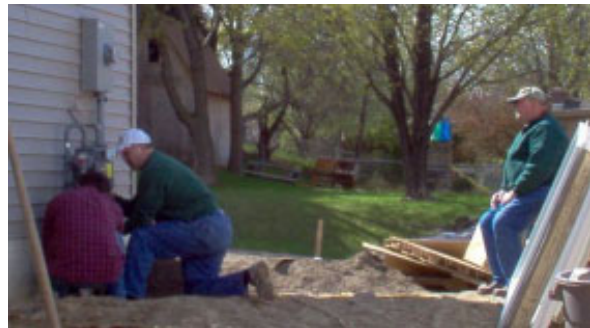
Mark Chapin prepares for roof duty.



"Can you believe they are working way up there?" Al Harris says to Kim Mesun. "No way. I'd never do that," Kim replies.



This is "way up there."



Greg and Al go to work but the site manager keeps an eye on them, just in case.

Greg Brooker and Al Harris receive instructions from the Habitat Site Coordinator.





Hey Mark, the ladder to the roof is the other way.



That's it Mark, now you have it.



Volunteers Margaret Westin and John Kirwin.

Loaves and Fishes June 1, 2005



PB&J assemblers extraordinaire - Al Harris and Margaret Westin.



Kim Mesun, Nancy Gove and Tom Kalitowski tackle the tough plasticware and napkin rolling job. Someone has to do it.



Mary Miller on dish duty and Steve Froh on orange slicing.



Tom can also disassemble and crush cans.

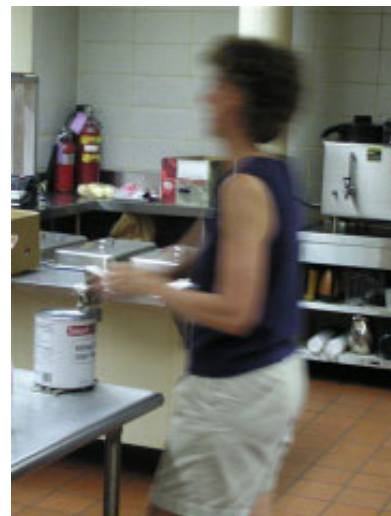


PLS friend and Loaves and Fishes regular LeeAnn Hanson.

Loaves and Fishes August 3, 2005



Nancy McLean can't believe what sloppy cooks public lawyers can be.



LeAnn Hanson again, this time on can duty. My, she's fast!



PB&J trainees Tom Kalitowski and Nancy Gove. The trick is to make the jelly last as long as the peanut butter.





Louis Thayer smiles because orange slicing duty in August is much better than cooking the meat.



Al Harris graduates to cookie tray assembly while LeeAnn keeps an eye on him.

**Tired of seeing the same faces?
We could always use some new volunteers!**

Pro Bono Policy Review

By: Nancy McLean, Co-chair, Pro Bono Task Force

The Public Law Section has convened a Task Force to develop a Pro Bono Policy for Government Lawyers. Jay Heffern, Minneapolis City Attorney, initiated this effort to review existing policies, evaluate what pro bono legal work is being done, analyze perceived barriers to pro bono participation by government lawyers, and encourage increased participation by all public lawyers.

The Committee, co-chaired by Nancy McLean and Cliff Greene, includes:

- Greg Brooker, U.S. Attorney’s Office
- Pat Burns, Office of Lawyer’s Professional Responsibility
- Bill Donohue, University of Minnesota
- Mary Ellison, William Mitchell
- Carole Finneran, Ramsey County Public Defender’s Office
- Cliff Greene, Green Espel
- Jay Heffern, Minneapolis City Attorney
- Bill Hefner, Green Espel
- Joan Humes, U.S. Attorney’s Office
- Judge Thomas Kalitowski, Minnesota Court of Appeals
- John Kingrey, Minnesota County Attorney’s Association
- Ken Kohnstamm, Minnesota Attorney General’s Office
- Nancy McLean, Hennepin County Attorney’s Office

The committee will analyze existing policies including the

MSBA Pro Bono Policy (1994, updated 2000), the Public Law Section Policy (2004), government policies, agency policies, and the policies for law firms that have a substantial public practice. Many offices have written policies detailing what pro bono legal work means, what types of pro bono can be performed, how and what office resources may be used in pro bono cases, and what level of pro bono work is expected, whether compensated or not. Some offices do not have written policies but encourage pro bono work on a case-by-case basis and others prohibit all pro bono legal work.

The next meeting will focus on identified and perceived barriers impacting public lawyer participation in pro bono legal work. For example, can a lawyer working for the government use office resources and/or make court appearances during the business day? Or, are there types of pro bono legal work (direct representation or committee work) that may be more suitable for government lawyers?

The committee is seeking pro bono policies and experiences from all public practitioners. If your office has a policy or experience with pro bono legal work, please contact Nancy McLean at Nancy.McLean@co.hennepin.mn.us.

Department Of Administration

Data Practices Opinions Index

By: Mary Miller, Compensation Attorney Principal, Minnesota Department of Labor and Industry

Copies of these opinions can be requested by calling the Department of Administration at (612) 296-6733 or (800) 657-3721. The full text of the Data Practices Opinions are now available online at <www.ipad.state.mn.us/opinions/index.html>.

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Opinion Requestor
05-013	3/28/05	Wild Rice Watershed District Board (Board)	Open meeting law – discussion pertaining to contract out.	Board/Hanson
05-014	4/18/95	Cannon Falls Community Hospital Board	Open meeting law – committee meetings.	Workman
05-015	4/20/05	ISD 728	Superintendent's Friday reports. "Follow-up" requests.	Elk River Education Association, Shogren
05-016	5/3/05	Rock County Auditor/Treasurer Office	Fee for copies – minimum charge.	LaFond
05-017	5/11/05	St. Paul	"personal" e-mails	<u>St. Paul Pioneer Press</u> , Nelson
05-018	5/11/05	St. Paul	Data about former employee complaint.	<u>St. Paul Pioneer Press</u> , Nelson
05-019	5/16/05	Winona Housing and Redevelopment Authority (HRA)	Interview summaries of employees about whom complaints were made.	HRA/Goering
05-020	5/20/05	Resource Training and Solutions	Location of data inspection.	Leyk
05-021	6/10/05	ISD 196	Classroom tests and quizzes completed; copies of versus access to.	ISD 196/Coyle
05-022	6/16/05	ISD 701	Release of data about students with disabilities to PSAs.	ISD 701/Colosimo
05-023	6/24/05	Washington County Housing and Redevelopment Authority (Authority)	Street addresses of rental properties occupied by benefit applicants or recipients.	Authority/Brennan
05-024	6/24/05	Resource Training and Solutions (RTS)	Operating agreement between BCBS and RTS; trade secret vel non.	Leyk
05-025	6/29/05	ISD 709	Resignation of employee subject of complaint; final disposition vel non.	ISD 709/Rupp and Mace

Upcoming CLE Seminars

By Mary Miller, Compensation Attorney Principal, Minnesota Department of Labor and Industry

Date	Seminar	Time	Place	Sponsor/Contact
9/29/05	Sentencing Circles	Noon to 1:00 p.m.	Ramsey County Courthouse, Room 40	Second Judicial District District Administrator <cleprogram@courts.state.mn.us>
10/12/05	Ethics: The New Rules of Professional Conduct	9:00 a.m. to Noon	State Office Bldg. (Rm. No. will be posted)	MN Revisor's Office 651/296-2868
10/12/05	Constitutional Law Update	10:30 a.m. to Noon	Radisson City Center St. Paul Ballroom A	Attorney General's Office/ Marty Casserly 651-297-5919
10/25/05	Rules of Professional Conduct	9:00 a.m. to 12:15 p.m.	MN CLE Center Minneapolis	MN CLE 651-227-8266
11/9/05	Child Protection in Minnesota	8:30 a.m. to 11:45 a.m.	Radisson City Center St. Paul Ballroom A	Attorney General's Office/ Marty Casserly 651-297-5919
12/14/05	The Absolute Prohibition of Torture and Ill Treatment	Noon to 1:30 p.m.	Radisson City Center St. Paul Ballroom A	Attorney General's Office/ Marty Casserly 651-297-5919
<i>To include a notice of an upcoming CLE in the next issue, contact Mary Miller 651/284-5306</i>				

Summary Of Credits For PLS Sponsored CLEs In 2004-05

Section	Meeting/Course Title	Date	Credits
Public Law (co-sponsored with Minnesota Association of County Attorneys)	Legislative Update and Minnesota Court Interpreter Program	06/22/05	2.5 Standard 2EOB
Public Law	Legislative Update on Data Practices Act	06/16/05	1.5 Standard
Public Law	Data Practices Legislative Update; Responding to Data Requests; Data Practices Case Law update; Data Security Issues; Working with Interpreters	05/13/05	3.0 Standard 1.5EOB
Public Law (co-sponsored with MDLA)	Preparing for an Administrative Law Hearing	04/13/05	1.5 Standard (MN & WI)
Public Law (co-sponsored with Life & Law Committee)	Tight Times – Remembering Why You are There	03/02/05	1.0 Standard
Public Law (co-sponsored with Mpls. City Attorney's Office)	Selected Public Employment Topics	11/09/04	3.0 Standard
Public Law (co-sponsored with Mpls. City Attorney's Office)	DWI Practice, Tips, Hot Topics and New Laws	09/10/04	3.0 Standard
		Total 04-05	15.5 Standard; 3.5 EOB

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