

Public Law News

A Publication of the Minnesota State Bar Association Public Law Section

Volume XIII, Issue I, Summer/Fall 2003

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MSBA



www.mnbar.org

IMLA Comes to Minnesota In October

By: Jay Heffren, Minneapolis City Attorney

This fall one of the premier public law conferences in the country is coming to Minnesota. On October 12th through October 15th, the International Municipal Lawyers Association (IMLA) will be holding its annual conference in downtown Minneapolis at the Hilton Hotel. If you have never attended this conference, this is an opportunity you should not miss.

The conference features national, regional and local experts on a broad range of public law topics. The written materials are comprehensive; the speakers outstanding. The first day of the conference, Sunday, October 12th includes two unique programs.

One of these programs is IMLA's Institute for Local Government Lawyers which covers the basics for new municipal lawyers. The other special Sunday program is a mobile land use tour of Minneapolis. From mixed-use developments to affordable housing, you'll see it all on this tour. This year's Institute will also include

presentations on public records and open meetings, ordinance drafting, parliamentary procedure, administrative hearings, municipal finance, and dealing with the media.

During the conference you will be able to meet both the expert presenters and public lawyers from across the country. The welcoming reception at the Minneapolis Institute of Arts, the Monday night banquet at the Hilton, and the golf tournament at Bunker Hills are opportunities to discuss one-on-one the issues that public lawyers wrestle with daily. There may even be a chance to play softball in the Metrodome!

IMLA has agreed to allow MSBA Public Law Section members who are not IMLA members to register for the conference at the IMLA member rate. This is a substantial savings. For more information on this conference or to get a registration application, go to <http://www.imla.org/conference/index.html>.



***The MSBA-Public Law Section is pleased to
co-sponsor....***

National Association of Hearing Officials

*2003 National Training and Continuing Legal Education Conference Co-sponsored by the
Minnesota Department of Human Services and MSBA Public Law Section*

***Back to Basics—
Fundamentals for All
Administrative Hearing Officers
September 14 - 17, 2003
Millennium Hotel
Minneapolis***

The curriculum has been carefully planned to address the needs of those seeking NAHO certification by enlisting faculty members from the local courts, agencies, and law schools as well as nationally recognized speakers from throughout the country. We have applied for 15 continuing legal education credits, including ethics and elimination of bias credits. The subjects include evaluating credibility, evidence, decision writing, disqualification hearings and cultural competency. We will also look toward innovative ways to conduct hearings and evaluate evidence such as computer forensics in detecting welfare fraud. This conference is a must for hearing officers, administrative law judges, and anyone practicing in administrative law areas.

The conference will begin Sunday afternoon with an opening session by Kevin Goodno, Minnesota's Commissioner of Human Services. The conference

will continue through noon on Wednesday. As usual courses will be offered by a diverse faculty, which will include law school professors and administrative adjudicators from across the country.

Registration fees remain low to provide an affordable opportunity to enhance your skills, whether you are a new or experienced hearing official, judge, or attorney practicing in administrative law. Your registration fee includes a welcome reception, a luncheon, and a banquet dinner with entertainment in the dome room atop the Millennium Hotel Minneapolis. To learn more about the conference, registration, and cost, please visit the NAHO website at:
< http://www.naho.org/conference_2003.htm >.

We look forward to seeing you at the conference.

Public Attorney Award for Excellence – Public Defender Category Named for William E. McGee

By: Allen Giles

At the Public Attorney awards ceremony on May 16, 2003, it was announced that the Public Attorney Award of Excellence given each year to an outstanding public defender, one who has distinguished him or herself by commitment to justice and defense of minorities and poor persons, will now be recognized as the William McGee Public Attorney Award of Excellence for Public Defenders in memory of the former Hennepin County Chief Public Defender.

Additionally, on May 16th the Douglas Amdahl Award for Career Achievement was presented posthumously to William Earl McGee. William McGee passed away on November 13, 2000 after a courageous struggle with lung cancer. His wife Rose McGee described him as “a warrior, an absolute warrior, filled with compassion, he believed in justice and fighting for everyone.”

William McGee was the envy of all in terms of his background and training for the law. When he began law school he actually understood what the term *corpus juris secundum* meant. Those of us who did not understand Latin simply referred to this legal encyclopedia as “CJS”. Bill graduated from the University of Minnesota Law School in 1980. He set himself to work right away following his passion for justice doing public defense representation. In 1983, he began employment with the Hennepin County Public Defender’s Office, where he worked for two years. In 1985, he became the Executive Director of the Legal Rights Center of Minneapolis where he led the fight for justice for seven years until 1992. He and his staff championed the legal rights of Native Americans, African-Americans, Latinos, and Asian Americans. Then in 1992 he rejoined public practice this time as an Assistant Hennepin County Attorney from 1992-1997. In 1997 he was appointed as Hennepin County’s Chief Public Defender. He was reappointed for another four-year term in that position and held that position at the time of his death.

William McGee has been described as a person with great leadership skills and an inclusive vision of justice. He showed that quality every day of his working life. He spent his life championing the underdog. He was considered a pioneer in getting the needs and hopes of the black community recognized in the criminal justice system. He was one of the attorneys who argued successfully in Hennepin County that harsher state penalties for possessing crack cocaine compared with powder cocaine had a disproportionate affect on blacks. The Minnesota Supreme Court later agreed with that conclusion and determined that the differentiated crack cocaine penalties were unconstitutional. He was also hired to help Hennepin County investigate the killing of a black teenager by a white Minneapolis Police officer in 1990.

Bill was involved in numerous community activities and organizations and he has been recognized by and received many community and professional awards for his commitment and dedication to public service and to the pursuit of justice. He was a former president of the Minnesota Association of Black Lawyers. He received the Hennepin County Bar Association pro-bono award and the Minnesota Minority Lawyers Association leadership award. In addition to all the awards and recognitions that have been made for William McGee, the Public Law Section adds another well-deserved recognition. The Douglas Amdahl Career Achievement Award. This award is reserved for an attorney who has had an extraordinary and outstanding career as a public practitioner and whose career serves as a model or as a goal for others to achieve. William McGee was such a person.

This award is presented to Ms. Rose McGee, widow of William McGee.

2003 Annual Public Attorney Awards

On May 16, 2003, the Public Law Section presented its annual public attorney awards. Excerpts from the award presentation speeches are set out below.

Rosalie E. Wahl Judicial Award of Excellence: Joanne Smith

By: Nancy McLean



Dianne Ward and I first met Judge Smith when she was a Second Judicial District Public Defender and we were Assistant St. Paul City Attorneys. She impressed us then with her professional competence, her sense of justice, and her warm interpersonal style. Since

then we have had the pleasure of watching her distinguished career continue through many outstanding achievements, while she maintained the same core values she demonstrated as an Assistant Public Defender.

Judge Smith was appointed the first female judge on the Ramsey County bench in 1987. She quickly developed a reputation as a competent jurist. She is known for exercising just the right amount of courtroom control without unnecessary harshness, for her legal knowledge combined with a practical application of the law, and for her respectful demeanor. Through many different assignments on the bench, from criminal felony trials to family court, she has maintained the same reputation, not just with those appearing in front of her, but also with her colleagues on the bench who elected her to serve as Assistant Chief Judge in 1987 and then Chief Judge from 1989-1992.

In 1990, Judge Smith was appointed by the Supreme Court to the Commitment Appeals Panel, and is still carrying out these additional duties in this very important but not well-known function.

Judge Smith has expertise in the area of chemical and substance abuse having earned a M.A. Degree in Psychology and Counseling, working as a vocational Rehabilitation Counselor in a Chemical Dependency

Unit and as an Assistant Director and Counselor at a halfway house, as well as through her experience as a Public Defender and Judge. She has also been a board member of Lawyers Concerned for Lawyers since 1996. Judge Smith has been involved in many bench initiatives to improve service to people with substance abuse problems who come before the court. Her efforts have resulted in grant monies and innovative programs being initiated in Ramsey County. She has served on the Minnesota Department of Public Safety Combating Underage Drinking Taskforce Advisory Committee since 1998, and as Chairperson of the Second Judicial District Steering Committee on Substance Abuse in the Courts. She also served as the Coordinator of the Second Judicial District Court Conference on Alcohol Abuse and Crime and on the Byrne Advisory Committee for the Office of Drug Policy and Violence Prevention. She is a frequent lecturer at law schools and secondary educational institutions. Through her work across departments, through the judiciary, and through teaching she has made a difference in the lives of those touched by substance abuse.

Judge Smith has demonstrated a strong commitment to community through betterment of the judicial system and through community service. She served on the State Supreme Court Advisory Committee on the Rules of Criminal Procedure, serving as Chairperson from 1991-2000. In addition, Judge Smith contributed her time and energies to a number of professional and community programs including the Minnesota Bar Association Foundation, the Johnson Institute Foundation, the Criminal Defense Service Project, the St. Paul Domestic Abuse Intervention Project, Project Remand and the Second Judicial District Court Service Committee.

Judge Smith's sage advice is often sought by many others; whether it involves a legal issue another judge is struggling with, hiring a new court administrator for the Second Judicial District, or in the selection process for a new Federal Magistrate. Not only is Judge Smith a warm, competent jurist, she is a woman of incredible courage. She has demonstrated not only the courage to brave new frontiers in the legal profession, but also the courage to face incredible adversity. After presiding over John Patrick Murphy's criminal case she endured his campaign of violent threats, vandalism, and harassment, to an extent unparalleled in Minnesota.

During this, despite the sleepless nights, the extra hassles that befall a crime victim and the fear she had to live with, she carried out her public and community commitments with the same skill and aplomb as usual. Then, she took the difficult path of speaking out about her ordeal publicly, at the Legislature, which resulted in new, stronger anti-stalking legislation.

Hamline University School of Law honored Judge Smith with an Outstanding Achievement Award in 1987. I am pleased the Minnesota Bar Association, Public Law Section, has chosen Judge Smith for the 2003 Rosalie E. Wahl Judicial Award of Excellence. She deserves this award for her dedicated service, her commitment to justice, her contributions to the legal system and the community and her incredible courage.

Douglas K. Amdahl Public Attorney Career Achievement Awards: William Falvey, John Tierney and William McGee

William Falvey

By: Diane Alshouse



I am humbled to be able to present the Douglas K. Amdahl Public Attorney Career Achievement Award to William E.

Falvey today. Distinguished careers, significant contributions to public service, models of dedication and commitment – that’s what it takes to get this award as a retiring or retired public attorney. I can think of no finer candidate than Bill Falvey. Bill started out in the Minnesota Attorney General’s Office in 1966, was appointed Assistant United States Attorney for the District Of Minnesota in 1967, and became a part-time Ramsey County Public Defender in 1970 when there were only four attorneys working as public defenders in Ramsey County. He continued his private practice while public defending, was appointed Chief Public Defender of the Second Judicial District in 1973 and by 1975 became a full-time Public Defender. In 1985, Bill was diagnosed with Parkinson’s disease and he took early retirement in 1991. When Bill left as Chief Public Defender in 1991, there were approximately 44 full and part-time attorneys in the office, as compared to the 4 part-time attorneys he started out with in 1970. Since 1978 Bill has been a member of the following organizations:

Minnesota Sentencing Guidelines Commission
Minnesota Supreme Court Judicial Planning Committee
Ramsey County Corrections Advisory Board
Ramsey County Criminal Justice Coordinating Council
Northwest Suburban Youth Service Bureau
La Oportunidad
Centro Legal – still serving on this Board
Vietnamese Development Association – still serving as Chair of this Board
Amigos de Nicaragua
Sharing Korner Food Shelf

He is a permanent Deacon for the Archdiocese of St. Paul and Minneapolis and assigned to the parish of St. Adalbert, an inner-city parish located in the Frogtown area of St. Paul.

I met Bill Falvey in 1984 after graduating from law school. He gave me my first job in the law. I couldn’t ask for a finer example of dedication to clients no matter what the charge. Bill was known for his fiery oratory in the courtroom, his fine legal mind and his commitment to serving the underprivileged in our society. Bill Falvey treats everyone with honesty and respect, two qualities that seem to be rare in today’s public arena. His compassion, courage and leadership continue to inspire attorneys in the Ramsey Public Defender’s Office, as well as others in the community at large. I along with numerous other attorneys hope to someday achieve the level of professionalism and passion that Bill Falvey has demonstrated as his legacy as a public attorney.

Despite all of these wonderful qualities, Bill is still one of the most humble men I know. I am proud and honored to present the Douglas K. Amdahl Public Attorney Career Achievement Award to William E. Falvey.

John Tierney

By: Tom Frost

John Tierney’s service as a public sector attorney serves as a model for other public lawyers. In his career he has worked as an FBI agent, public defender, prosecutor, teacher, trainer, and administrator. In each of these roles he exemplified the highest standards of professionalism. He willingly took on whatever assignments he was given with excellence and good humor. He continually learned new skills and always worked long hours.

For a number of years John was responsible for training in the Hennepin County Attorney's Office in addition to running a division, trying cases and helping newer lawyers with trials. In 1995, John was freed of other responsibilities and allowed to concentrate solely on training. He planned and led in-house training for the office and off-site training for law enforcement. Whether dealing with updates on legislative changes or new Supreme Court mandates (as in the *Scales*¹ decision requiring all confessions to be audiotaped), John discerned where the trouble spots existed and created ways to effectively teach skills to deal with them.

John worked with lawyers from other public law offices to develop CLEs, many without cost, to enable public lawyers to get needed credits at no or low cost. John is a nationally recognized trial skills trainer. In addition to regularly teaching at Minnesota criminal justice and trial skills courses, he has taught at many national seminars including those sponsored by the National Institute of Trial Attorneys, National College of District Attorneys, American Prosecutors Research Institute, and Western Trial Academy.

In all that he does, John conveys respect for people coupled with a love for the law and our systems of justice. He is dedicated to the truth, fairness, and skilled excellence in advocacy. Through his training he spread these beliefs nationally and through his mentoring and collegial approach he spread these values to those who worked for and with him. John retired from the Hennepin County Attorney's Office in the summer of 1998. He continues to do training at the national level. John and his wife Joy now live in Tennessee near their daughter and her family.

¹ *State v. Scales*, 518 N.W. 2nd 587 (Minn. 1994).

John Tierney was unable to attend the awards ceremony but wrote as follows:

Dear Members,

Thank you for naming me as one of the recipients of the 2003 Douglas K. Amdahl Public Attorney Career Achievement Award. I consider it to be a special honor. I have always felt the most meaningful recognition is that which is received from one's peers. It is also a special honor for me to receive an award in the name of a jurist and person who I have so highly respected for so long.

I regret that I will be unable to be present to express my thanks in person due to our recent move and a teaching conflict on May 16th.

I wish you all continued success in the work of the Public Law Section.

Very truly yours,

John D. Tierney

William E. McGee

(See article on page 4.)

Julius E. Gernes Public Attorney Award of Excellence: Larry Collins

By: Mary Miller

Larry Collins has been the Waseca County Attorney since 1978. One nominator stated that he is the consummate public servant. He does whatever he can to protect and serve the citizens of Waseca County in his official capacity as the County Attorney and in his personal capacity as a citizen. He genuinely cares about the residents and is always acting with their best interests in mind.

Under his direction Waseca County established Adult and Child Protection teams before they were legislatively mandated. Larry recommended that Waseca County implement the Children's Justice Initiative, a new procedure to enforce strict timelines for juvenile matters. He is involved on the Vulnerable Adult Team. He developed the county truancy review program. He developed pre-petition screening to divert potential commitment cases where they were not really needed.

Larry developed an inter-agency and inter-professional group to encourage cooperation in matters involving children. They meet bi-monthly. Members include law enforcement, probation, school personnel, court personnel, social workers, and interested community members. This group is known as the Lunch Bunch. He sits on a supervisory committee dealing with Waseca County security and disaster management. He meets monthly with the District Court Judge, Court Administrator, Sheriff, and Human Services Department Head to discuss issues and concerns that will promote efficiency among the units.

Another nominator noted that Larry works tirelessly and, when he is working with you, makes you feel that you are the most important person in his world at that

time. He exemplifies a spirit of caring, cooperation, and commitment. He is a role model for anyone seeking to become a public servant at any level. He is a very dedicated, humble public sector attorney who needs to know that his years of contributions are greatly appreciated and have not gone unnoticed.

I am happy to present, in absentia, the Julius E. Gernes Public Attorney Award to Larry Collins.

Larry Collins was unable to attend the awards ceremony but wrote as follows:

Dear Mr. Thayer:

I feel honored to have been selected to receive the 2003 Julius E. Gernes Public Attorney Award of Excellence. I knew Julius when he was the Winona County Attorney. I have great admiration for him. He was an outstanding and gracious public servant.

I recall that years ago at a seminar I met a law enforcement officer who worked with Julius. She stated that when she initially worked with Julius, she was frustrated with his requests for thoroughness and his attention to details. She said she soon learned to respect and admire these qualities that he required and exemplified.

From time to time over the years I have told this story to law enforcement officers when we are working together on cases. It is a reminder to me to strive for high standards, as did Julius. Hopefully, by sharing this story with officers, they can appreciate the lesson learned by the officer who worked with Julius.

As I mentioned to you by telephone, I will not be able to attend the Public Law Section Annual Award Ceremony on May 16th. I will be on a previously planned family vacation to New Orleans and the Gulf Coast.

I want to thank you and the rest of the members of the Executive Council of the Public Law Section for this award. I greatly appreciate it.

Sincerely,

Larry Collins

William E. McGee Public Attorney Award of Excellence: Richard Carlson

By: Jay Heffern



I always look forward to being part of this program because it is an opportunity to celebrate the many outstanding lawyers in Minnesota who work in the public arena and work for and on behalf of the public. Richard

Carlson - this year's recipient of the William E. McGee Public Defender Award of Excellence - is one of these extraordinary lawyers. For more than twenty years, Dick has served thousands of families and individuals in our community as a Hennepin County Public Defender.

Being charged with a crime or being a juvenile facing charges can be a terrifying experience. Often these individuals are:

- without substantial financial means;
- don't understand the system; sometimes not even the language; and
- face the prospect of life changing consequences.

It takes a special lawyer to serve these individuals and Dick Carlson is one of those special lawyers.

When you ask people about Dick, there are certain words that everyone uses to describe him:

- patient
- dedicated
- trustworthy
- caring
- compassionate

Currently, Dick represents juveniles. This assignment offers great challenges and great satisfaction. It is an opportunity to help young individuals make decisions that can redirect their lives and recapture the possibilities that life offers them. These individuals are fortunate Dick is there to help - with his considerable skills, his unending energy, and his tireless commitment to them.

Lisa McNaughton in her nomination letter said of Dick: "I strongly urge the selection of this humble, hard-working man who has labored long in the trenches of our criminal justice system to bring decency to so many

people's lives." Bill McGee would be so proud today because Dick is the kind of lawyer who is part of Bill's legacy. All of us who are public lawyers are proud today. It is my honor to present this year's William E. McGee Public Defender Award of Excellence to Richard Carlson.

Public Attorney Award of Excellence – Public Law Office Category: Mark Ponsolle

By: Dianne Ward



I am very honored to have the opportunity to share with you why Mark J. Ponsolle is so deserving of this next award. Mark has had a long and

distinguished career as a public lawyer during which he has demonstrated truly exceptional leadership, dedication, and initiative. After graduating from the William Mitchell College of Law he started his legal career twenty-five years ago as a law clerk in the Dakota County Attorney's Office, where he worked as an attorney in the Civil Division, as Director of the Human Services Division, and as the First Assistant County Attorney. While in Dakota County he acted as a Special Assistant Scott County Attorney in the Scott County child abuse cases.

Mark has worked in the Ramsey County Attorney's Office for the past 15 years. He has worked as the Director of the Juvenile and Family Violence Division, supervising delinquency, child protection and felony child abuse cases. He was the Assistant Civil Division Director and he is currently serving as the Director of the Child Support Enforcement Division. Unlike all other 86 counties, the Ramsey County Child Support agency is in the County Attorney's Office, so Mark supervises not only the legal staff but also the child support staff, over 160 employees. Mark's job, as he likes to put it, is to "feed babies." He's done that very well. During his tenure as Director, child support collections in Ramsey County have risen 26%. He's brought an increased focus on fairness and justice to the child support arena. In 2001, the Ramsey County Attorney's Office Child Support Enforcement Division was presented the Outstanding Program Achievement Award by the Minnesota Family Support Recovery Council (MFSRC).

Mark's achievements, however, extend far beyond increased collections and better orders in Ramsey County. He has worked tirelessly to improve policies on the state and federal levels. Mark serves as Chair of the Human Services Committee and Child Support subcommittee of the Minnesota County Attorney's Association (MCAA). He also chairs the legislative committee of MFSRC. In this capacity he coordinates legislative activities and testimony for the MCAA and the MFSRC. This year he helped plan the federal child support forum in Washington, D.C. as well. Mark is also an active participant on advisory committees for the Minnesota Department of Human Services, Child Support Division.

Mark has contributed to his profession in many ways. For example, he is on the Minnesota State Bar Association Diversity Committee and the Minnesota Supreme Court Juvenile Rules Committee. He is also a mentor for St. Thomas Law students.

Mark is passionate about all he does and will share that passion with anyone – police, college and law students, lawyers, government workers, health workers, etc. All have benefited from his teaching on such topics as data practices, child protection, child support, and the vulnerable adults act.

Mark's contributions to the community are many. He is devoted to youth athletics and arranges his busy schedule to coach Hill Murray High School girl's junior varsity hockey. Also, he coaches summer hockey and was a Minnesota select hockey director as well as a softball coach. Reflecting on the comments about Judge Smith who just received her award, given that the first female judge in Ramsey County was appointed just 16 years ago, I should mention that Mark invests a lot of time coaching girls, and mentoring female law students and attorneys, strongly supporting inclusion of girls and women in all aspects of our society. Susan Gaertner, the Ramsey County Attorney, who is here with us today, nominated Mark for this award. I'd like to read a quote from her letter of nomination. She said:

Whether in the courtroom, the conference room or the coaching arena, Mr. Ponsolle brings a positive attitude, high energy and unwavering determination to his endeavors. He is respectful of others but doesn't hesitate to speak his mind — whether to his boss, his colleagues, or his hockey players. These personal qualities have earned him widespread respect and admiration. He is an extraordinary person who has distinguished himself through public service and the public practice of law.

As Mark's colleague, employee and friend, I would like to join with Susan, and the many others who have worked with Mark, and say I can't think of anyone more deserving of this prestigious award. It is my very great pleasure to present Mark J. Ponsolle the Public Law Office: Public Attorney Award of Excellence.

**Public Attorney Award of Excellence –
In-house Agency Counsel: Richard Wexler**

By: Kim Buechel Mesun



Dick Wexler is currently in charge of the Minnesota Department of Health's legal unit. He has been an Assistant Commissioner at the Health Department

since June 1999. His primary responsibility in that role is leading the Department's Access and Quality Improvement Bureau, which consists of the Health Policy and Systems Compliance Division and the Facility and Provider Compliance Division. These two divisions are responsible for the Department's regulation of health care providers and insurers.

Before joining the Health Department, Dick was a Minnesota Assistant Attorney General from 1971 until 1999. This is where I met Dick. He was the Manager of the Health Division of the AG's Office. When looking for an assignment at the AG's Office it was one of the most popular divisions because they seemed to have so

much fun. Though getting into the division was tough since there was little turnover. Dick chaired the AG's Ethics Committee from 1985 until 1999. He has served on the Minnesota State Bar Association's Administrative Law Section Governing Council and on the Health Law Section Governing Council.

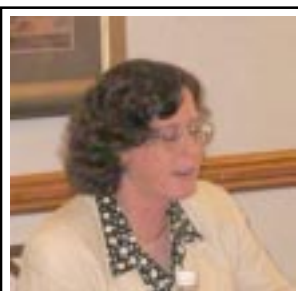
The persons who nominated Dick for this award cited his long-time dedication to public service, his excellent work, his compassionate and caring nature, his unfailing respect for his colleagues, and his integrity. They called him the "ideal supervisor."

He is always there to help, but he is not a micro manager. He listens to the people he supervises, and ensures that we share ideas with each other. He recognizes that a wide variety of ideas and styles will produce the best possible legal work. Dick knows the importance of laughing and having fun as a work group. . . . Dick's approach to supervision results in loyal attorneys who respect him immensely, quality legal work completed in a timely manner, and an enjoyable work environment.

Another nominator said of Dick that he: "created in the Health Division of the Attorney's Office such a strong sense of camaraderie and loyalty that to this day, there is a monthly reunion of the numerous attorneys who served under him, even though only one of those attorneys still remains in that division, which he left in 1999." She stated that Dick has been dubbed by his colleagues "Our Fearless Leader" and "Our Benevolent Dictator." For these qualities and his tireless efforts for the public good, we are proud to present the Public Attorney Award for Excellence to Dick Wexler.

Local Government Issues CLE - May 16, 2003

by Mark Chapin, Assistant Hennepin County Attorney



Presenter Karla Wahl.

On May 16, 2003, the Public Law Section Local Government Committee sponsored a continuing legal education seminar entitled "Local Government Issues." It was held at the Four Points Sheraton St. Paul

Hotel. The three-credit course featured an overview of DNA testing by Pat Diamond, Managing Attorney in the Hennepin County Attorney's Office (HCAO). David Hough, *(Continued on next page).*



Presenter Pat Diamond.

Prior Public Attorney Award Recipients

Rosalie E. Wahl Judicial Award of Excellence

2002 The Honorable Renee L. Worke
 2001 The Honorable George A. Beck
 2000 The Honorable J. Earl Cudd
 1999 The Honorable Leslie May Metzgen
 1998 The Honorable
 Kenneth F. Fitzpatrick
 1997 The Honorable George H. Hoey

Douglas K. Amdahl Career Achievement Award

2002 The Honorable Gary Crippen
 LeRoy Jackson
 The Honorable Kenneth J. Maas
 2001 The Honorable
 Douglas K. Amdahl
 2000 The Honorable
 Doris Ohlsen Huspeni
 Phillip B. Byrne
 1999 The Honorable A.M. "Sandy" Keith
 The Honorable
 Esther M. Tomljanovich
 James N. Bradford
 1998 Floyd B. Olson
 1997 The Honorable Rosalie E. Wahl
 Stanley G. Peskar
 William Kennedy
 Julius E. Gernes
 1996 Earle T. Anderson, Jr.
 Robert R. W. Johnson
 The Honorable Jon L. Lunde
 Lloyd Moosbrugger

Julius E. Gernes Public Attorney Award of Excellence (County Attorney and/or prosecutor)

2002 Al Zdrazil
 2001 Alan J. Harris
 1999 James c. Backstrom
 1998 Dianne A. Ward
 1997 John R. Speakman
 1996 Conrad I. Freeberg

William E. McGee Public Attorney Award of Excellence

2002 Ronald Greenley
 2001 Cynthia T. Daly
 2000 Larry Hammerling
 1999 Manley Zimmerman
 1998 Harry Newby, Jr.
 1997 Candance Rasmussen
 1996 Fred Friedman

Public Attorney Award of Excellence: In-House Agency Counsel

2001 Thomas W. Anderson
 2000 Laura D. Kadwell
 1999 Ann Russell
 1998 Michael B. Johnson
 1997 Julie M. Brunner

Public Attorney Award of Excellence: Public Law Office

2002 David R. Ornstein
 2001 Robert A. Stanich
 2000 John L. Kirwin
 2000 Desyl L. Peterson
 1999 William P. Donahue
 1998 Alan C. Williams
 1997 Richard S. Slowes
 1996 Beverly Jones Heydinger



Presenters David Hough and Margaret Westin.

(From page 10).
 Assistant Hennepin County Attorney and Margaret Westin, Assistant General Counsel, Minneapolis Public Schools, walked through the Data Practices Act in a participatory

hypothetical session. Finally, Assistant Hennepin County Attorneys Sara Wahl and Bev Wolfe gave a presentation on "Multiple Plaintiff Employment Litigation."



PLS Local Government Committee Co-chairs Eileen Wells and Mark Chapin.

Eyes on the Courts

By: Greg Brooker, Assistant U.S. Attorney

The following are summaries of federal and state cases you may have missed this past spring and summer.



Police Liability/Excessive Force

Kuha v. City of Minnetonka, 328 F.3d 427 (8th Cir. 2003).
Opinion issued on May 8, 2003.

At approximately 5:30 a.m., while driving home after a night of drinking, Jeffrey Kuha failed to dim his lights at an on-coming Minnetonka police car. The police officer made a U-turn and pulled Kuha over. While the officer was calling in the vehicle license plate, Kuha ran from his car into a swamp abutting the road. The officer called for backup as Kuha entered the swamp and the hilly area beyond. The canine unit responded with “Arco,” a police dog trained under a “bite and hold” method. Two officers and the dog entered the swampy area to apprehend Kuha. Arco remained on his leash as they tracked Kuha up a steep, woody hill and toward a grassy area. At one point, when Arco was around 10 feet out on his leash, the dog indicated to the officers that Kuha was relatively close. Thereafter Arco bounded into the three-foot high grass and seized Kuha by biting his upper leg. Kuha was naked except for his boxer shorts, having taken off his clothes after swimming through the swamp. Arco’s bite pierced Kuha’s femoral artery, causing substantial blood loss.

After pleading guilty to disobeying a police officer, Kuha commenced a Section 1983 action against the City of Minnetonka and the individual officers, alleging that the police officers failed to give a verbal warning prior to using a police dog trained to bite and hold. The district court granted summary judgment to the City and the officers.

The Eighth Circuit reversed the grant of summary judgment to the City. The appellate court first held that a properly trained police dog is not an instrument of deadly force, finding that the likelihood of death from the use of such a dog “remote.” However, the court did determine that a jury could properly find it objectively unreasonable for a police officer to use a police dog trained in the bite and hold method without first giving

the suspect a warning and opportunity for a peaceful surrender. The suit against the City was thus remanded for trial.

The district court’s grant of summary judgment to the individual officers was affirmed. The court found that Kuha’s right to a verbal warning was not clearly established at the time of the seizure, and thus the officers received the benefit of the qualified immunity doctrine.

Negligence/Duty of Care

Reimer v. City of Crookston, 326 F.3d 957 (8th Cir. 2003).
Opinion issued on April 10, 2003.

Robert Reimer was severely burned while examining a low-pressure boiler used to heat a swimming pool owned by the Crookston Public School District and jointly operated by the school and the City of Crookston. Reimer was a boiler repair expert employed by a private firm. He was called to the public facility to perform an ultrasound on a reportedly leaky boiler. Interpreting Minnesota law in this diversity action, the U.S. District Court granted summary judgment to all the defendants. The district court held that the city, school, and related officials owed no duty of care to Reimer because his injury resulted from an open and obvious danger. The district court alternatively held that Reimer had assumed the risk of injury when he agreed to examine the boiler.

The Eighth Circuit reversed. Given Reimer’s testimony that he saw corrosion on the nipple, and his experience and expertise in the field of boiler repair, the Eighth Circuit agreed with the district court that the condition and risk of the corroded nipple were objectively obvious. However, the Eighth Circuit held that a jury must decide whether Reimer should have anticipated the harm despite such knowledge or obviousness.

Viewing the facts in the light most favorable to Reimer, the appellate court noted that: (1) in the course of examining the boiler, Reimer saw some corrosion but no more than he had seen on many other boilers; (2) Reimer was to perform an ultrasound test, which did not entail contact with the interior of the boiler or with the nipples

or bungholes on the boiler; (3) the school's licensed boiler engineer, who was with Reimer while he was performing the ultrasound test, understood the gravity of the danger posed by the corroded nipple by virtue of the concerns raised by another boiler repairman, who had refused to work on the nipple just hours previously. The appellate court noted that the school engineer saw Reimer working in close proximity to the nipple and yet failed to warn Reimer of the danger.

The court of appeals also reversed on primary-assumption-of-risk grounds. The court ruled that a jury could reasonably conclude that, based on the information Reimer possessed at the time and given the nonintrusive test he was performing, the risk of being burned while examining the low-pressure boiler was neither a reasonably apparent danger nor a reasonably foreseeable incidental risk.

No-Fault Auto Law/Police Cars

Mutual Service Casualty Insur. Co. v. LMCIT, 659 N.W.2d 755 (Minn. 2003).
Opinion issued on April 24, 2003.

On March 17, 2002, a City of Rochester police officer struck a pedestrian while driving a marked patrol car. At the time of the accident, the officer was acting within the scope of his duties. The pedestrian's insurer brought a declaratory judgment action against the City's insurer to require it to pay the pedestrian's basic economic loss benefits on the grounds that the City's insurer had first priority coverage under Minnesota's No-Fault Automobile Insurance Act. The state district court granted summary judgment to the City, holding that a marked police car was not a "motor vehicle" under the no-fault act. The Minnesota Court of Appeals reversed, holding that the plain meaning of the definition of "motor vehicle" in the act would lead to absurd results if a marked police car did not fall under the definition. The Minnesota Supreme Court granted the City's petition for review and reversed.

The state supreme court reversed the appellate court. The court held that the no-fault act permits recovery of basic economic loss benefits only when the injury results from the maintenance or use of a "motor vehicle" and that a marked patrol car is not within the definition of a "motor vehicle" because it is not required to be registered under Minnesota law. The court held that there was no reason to disregard the plain meaning of the statute in this case because the court could not say that the legislative purpose so clearly contradicted the plain meaning of "motor vehicle" in the statute.

False Claims Act/Health Care Fraud

Hays ex rel. U.S. v. Hoffman, 325 F.3d 982 (8th Cir. 2003)
Opinion issued on April 9, 2003.

A Morris, Minnesota, company owning several nursing homes fired Patrick Hays the day after Luverne Hoffman, the executive director of the company, learned that Hays had sent whistleblower letters to the Minnesota Department of Human Services ("DHS"), alleging Medicaid program fraud on the part of the company. After receiving the letters, DHS conducted audits, which ultimately concluded that the company had failed to comply with Medicaid reimbursement rules. Hays obtained copies of the audit reports and commenced suit under the federal False Claims Act, asserting a claim for retaliatory discharge as well as a claim seeking damages and civil penalties for each false claim the company submitted to Medicaid, a joint federal-state program.

The federal jury found that the company had unlawfully retaliated when it fired Hays. It awarded him \$771,736 plus interest on the back pay component of the retaliation award, plus costs and attorney fees. The company did not appeal this portion of the jury verdict. It did, however, appeal the jury's finding that the company had submitted a total of 336 false claims to Medicaid. Pursuant the False Claims Act, the federal judge then assessed a \$5,000 civil penalty for each of the 336 false claims submitted, resulting in an award to the United States of over \$1.6 million.

The Eighth Circuit reversed. The court held that the DHS audit reports were publically disclosed prior to the commencement of Hays' false claims suit and that, because he was not the original source of this public information, Hays was barred from filing a *qui tam* action under the Act. Hays argued that he was the original source of all the information in the DHS audit reports because his whistleblower letters were the reason or the catalyst for the DHS to conduct its audit of the company. Rejecting this "catalyst" theory, the appellate court held that Hays did not have "direct and independent knowledge of the information on which the allegations were based." The court did find that Hays was the original source of information that led to 5 false claims being submitted by the company. The court thus awarded a total of \$80,000 in civil penalties against the company, a significant decrease from the \$1.6 million awarded by the district court.

Discriminatory Enforcement/Equal Protection

Thul v. City of Ham Lake, 657 N.W.2d 611 (Minn. Ct. App. 2003).
Opinion issued on May 28, 2003.

The City of Ham Lake enacted an ordinance restricting the areas in the city where helicopters could take off and land. The ordinance contained an exception for locations approved by the Federal Aviation Administration (“FAA”) pursuant to federal regulations. The FAA determined that helicopter operations could be conducted safely at Steven Thul’s heliport, provided that, among other things, warning signs be maintained around the take off and landing area. The City ultimately charged Thul with violating the ordinance; Thul countered that the ordinance was preempted by federal law.

The district court denied Thul’s motion to dismiss the charges against him, holding that federal law did not preempt the ordinance. The court also determined that, because he failed to comply with the FAA condition regarding warning signs, Thul was not covered by the FAA exception to the ordinance. At a post-conviction hearing, the court determined that the ordinance was not void for vagueness and that the city’s enforcement of the ordinance against Thul did not violate equal protection.

The Minnesota Court of Appeals affirmed, noting that in order to prevail in a discriminatory-enforcement claim, a defendant “must allege facts showing both that he was singled out for enforcement and that his selection was invidious or in bad faith.” Although Thul argued that another helicopter operator was grandfathered in while the city enforced the ordinance against him, the appellate court noted that the other operator complied fully with the FAA conditions, whereas the district court determined that Thul had not.

The court also rejected Thul’s arguments that the ordinance was facially unconstitutional and preempted by federal law. Citing *Arcadia Dev. Corp. v. City of Bloomington*, 552 N.W.2d 281 (Minn. Ct. App. 1996), the court held that “under the rational basis test, the challenged legislation need only be supported by any set of facts either known or that could reasonably be assumed.” Thul argued that the city enacted the ordinance because his neighbor complained about the noise, but the court noted that the city council discussed safety at the ordinance hearing, a legitimate

purpose of legislation. With regard to the preemption argument, the court noted that other courts have found no conflict between a city regulatory power over land use and the federal regulation of airspace.

Adult Uses/Dancer License Ordinance

Tom T., Inc. v. City of Eveleth, No. 03-CV-1197, 2003 WL 1610779 (D. Minn. March 11, 2003).

Eight performers at Tuna’s Bar in Eveleth sued the City of Eveleth, arguing that the City’s professional dancer licensing ordinance was unconstitutional. They sought a temporary restraining order (“TRO”), but the City Council passed a resolution suspending enforcement of the ordinance, which required the dancers to obtain a license before they could perform. Despite the City Council resolution, the U.S. District Court granted the dancers’ motion and issued the TRO.

The court first found the ordinance overboard, in that it was not limited to sexually explicit performances or to sexually oriented businesses but rather covered all professional dancers at any establishment holding a liquor license. Because of breadth of the ordinance, the court determined that there was a realistic danger that the ordinance would significantly compromise the First Amendment protection of persons not before the court.

The court also held that the ordinance gave city officials an undefined range of discretion in granting the professional dancer license, thereby constituting a prior restraint on speech. The court noted that the ordinance did not contain strict deadlines for the issuance of a license and it did not provide for an expeditious judicial review of an administrative denial of a license application.

In addition, the court held that some of the information requested of license applicants, such as a residential address, was not a valid time, place, or manner regulation and worked a chilling effect on speech and expression. Because the dancers would likely succeed on the merits of their constitutional attack, the court granted the motion for a TRO.

Right to Privacy/Short-term Social Guest

In the Matter of the Welfare of B.R.K., 658 N.W.2d 565 (Minn. 2003). Opinion issued on April 3, 2003.

When B.A.O.’s parents were out of town, B.A.O., a juvenile at the time, threw a party following a high school dance. About 14 teenagers attended, and

several consumed alcohol. The party broke up when the mother of one of the attendees came and warned the teenagers that the police may be called. B.R.K., another juvenile, remained at the home, along with B.A.O. and two other teenagers. The four turned off the lights and attempted to lock all the doors, but they were unable to lock the front door due to the build-up of ice. They then sat on a couch, talked, and watched T.V. with the volume turned all the way down.

The mother of one of the attendees who had been picked up earlier called the Chippewa County Sheriff's Department and reported that there was an underage drinking party at B.A.O.'s house. Shortly after the report had been filed, two deputies were dispatched to B.A.O.'s house. When the four teenagers noticed the deputies' car pull into the driveway, they went to a back room in the basement, shut the door, and hid behind the furnace. The deputies knocked on the front door and announced themselves. While the deputies were at the front door, a car pulled into the driveway. The driver of that vehicle was the same woman who had earlier notified the sheriff's department of the party. The woman wanted one of the teenagers in the house removed because the teenager was suppose to be at her house with her daughters. The deputies knocked on the door a few more times and then entered and found the

teenagers. B.R.K. admitted to consuming alcohol, tested positive for alcohol consumption, and was charged with consumption of alcoholic beverages by a minor.

At B.R.K.'s trial, B.R.K. moved to suppress the evidence gained by the warrantless entry and search. The district court denied the motion, holding that B.R.K. did not have a reasonable expectation of privacy in the home because she was not invited to attend the party, but rather just showed up with friends. B.R.K. was convicted and appealed. The court of appeals affirmed.

The Minnesota Supreme Court reversed, finding that B.R.K. had standing to suppress the evidence because B.R.K. demonstrated an actual subjective expectation of privacy in the home and that the expectation was reasonable. The state supreme court noted that B.R.K. was a short-term social guest at the home and had a reasonable expectation of privacy in the host's home both under the federal and state constitutions. The court held that the sheriff deputies violated both constitutions when they entered and searched the home without first obtaining a search warrant. The court remanded the case, holding that all evidence obtained against B.R.K from the unconstitutional search must be suppressed at any future proceeding.

Loaves and Fishes

April 3, 2003: A small but dedicated crew cooked the traditional tater tot hot dish for the 300+ people who come to eat at the Loaves and Fishes program.



"We've got the hamburger, mushroom soup and cookies covered."



The magical tatter tot hot dish is prepared.

June 19 CLE "The Role of the Attorney in the War on Terrorism"

The MSBA Public Law Section and Human Rights Committee co-sponsored a CLE entitled: "The Role of the Attorney in the War on Terrorism" at the MSBA convention. There were two panels: the first discussed immigration issues after 9/11; the other panel discussed the practice challenges attorneys now face in the war on

terrorism. Panelist included: Mark Cangemi, from the Department of Homeland Security, Joe Margulies, private attorney, Leonardo Castro, Hennepin County Public Defender, Joan Humes, Assistant U.S. Attorney, Peter Erlinder, William Mitchell Professor, and Carol Ellingson, private attorney

Panelists discuss immigration issues since 9/11.



Panelists discuss practice challenges attorneys now face in the war on terrorism.



City Attorney Mid-year Conference

By: Corrine Thomson, Kennedy & Graven

The Minnesota City Attorneys Association met on June 27, 2003 at the Radisson Suites hotel in St. Cloud for its mid-year conference. The President of the Association, Maren Swanson (City Attorney for Northfield) emceed the event. Attorneys representing over 40 Minnesota cities attended the event.

The highlight of the conference was the annual legislative update given by the League of Minnesota Cities government relations staff. Gary Carlson and Anne Finn summarized significant legislation in the civil area, including amendments to the so-called "60-day law" and changes to joint and several liability. Laura Gray identified key changes in the DWI law and other criminal laws.

Beth Mercer-Taylor from Kennedy & Graven reviewed court decisions of interest to municipal attorneys from the past year, and Sue Naughton from the League of Minnesota Cities provided those present with a "heads up" on pending cases at the Minnesota Court of Appeals.

The afternoon concluded with three presentations, all by staff members of the League of Minnesota Cities. Anne Gergen told attendees how the Health Insurance Portability & Accountability Act (HIPAA) may affect local government bodies. She simplified a complex subject matter in a practical and entertaining presentation. Laura Kushner summarized legal and practical issues involved in staff reductions. Anne Finn closed out the session by leading a discussion on the concealed carry legislation.

Highlights of the June 19 Board of Governors Meeting and the June 20 General Assembly Meeting (at the Convention)

By: Harriet Sims, Minnesota Department of Revenue, Public Law Representative to the Board

The Board of Governors was called to order at approximately 2:20 p.m. after the annual meeting and report of the Bar Foundation.

Treasurer's Report: Year to date dues are 98.8% of budget and revenues are 94.1% of budget (100% including record book). Expenses are 76.2% of budget excluding the record book (86.6% including record book).

Recognition of Outgoing Board of Governors Members and Senior Counselors:

Outgoing Board of Governors members were recognized with a beautiful engraved plaque made of dark stone. Thirty-five senior counselors (fifty years of practice) were recognized.

Action Calendar: *Ratification of Actions taken at the April 26, Board of Governors Meeting:* The April 26 Board of Governors meeting did not have a quorum therefore a resolution was proposed to approve the actions taken by the members attending that Board of Governors meeting. The resolution was divided into two parts. The first part included all actions except the action approving the recommendation of the Executive Committee to amend the bylaws to allow the Executive Committee, subject to the Board of Governor's approval, to assess dues in a different manner than provided for in the bylaws on a trial basis. [Note: this issue grew out of the Ramsey County Bar Association's proposal for a pilot project involving group billing for some government law offices. The dues would have been lower on an individual basis but the total amount of dues received by the MSBA would have been higher.] After brief discussion this resolution did not get the two-thirds vote necessary to pass. The general concern seemed to be that dues issues should be handled by the Board of Governors and that the Task Force on Governance will have some recommendations to streamline that process. All other actions taken at the April 26 Board of Governors meeting were ratified.

Election of Officers for Fiscal Year 2003-04: The following officers were elected:

President-Elect	David Stowman
Treasurer	Susan Holden
Secretary	Patrick J. Kelly

The following at-large members to the Executive Committee were elected:

Outstate	Kenneth R. White (re-elected)
Hennepin County	Lorie Gildea
Ramsey County	Dan O'Connell

In other action the Board of Governors approved the Real Property Law Section recommendation to amend Title Standard #107 (dealing with attorney liens), created a Military Affairs Committee and an Animal Law Committee. The Board approved the Insurance for Members Committee's recommendations to change the long-term car insurance providers and create a new group health insurance program for solo practitioners. There was no new business and the meeting adjourned at approximately 3:45PM

The General Assembly: The General Assembly was called to order at 9:15 AM on Friday June 20, 2003. All members registered at the convention are members of the General Assembly.

There was a moment of silence for departed bar association members.

Chief Justice Kathleen Blatz reported on the state of the judiciary.

President Jon Duckstad presented the President's Award to the MSBA Task Force on Governance.

Lloyd Grooms presented a Legislative Report.

New President: Incoming President James Ballie indicated that pro bono issues would be important. He has met with several large law firms and will meet with

sections as well. A task force is also working on business law pro bono issues. President Baillie also noted that membership is declining and this is evident across the board for civic organizations.

Dues Increase: The General Assembly approved the recommendation of the Board of Governors to increase dues by \$5 in each of the next three years. The Association's reserves are currently at 18% and are projected to remain stable.

ABA Model Rules of Professional Conduct and Minnesota Rules of Professional Conduct Task Force Report: The report and recommendations were passed with the following amendments:

Deleted proposed Rule 4.1(b) and its associated comment, which dealt with failing to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client because this matter is effectively dealt with in Rule 1.2(d) and others.

Proposed Rule 5.4(a)(4) was amended to limit sharing of court-awarded legal fees to non-profit organizations subject to full disclosure and court approval.

The meeting was adjourned at approximately 11:48 AM

Habitat for Humanity Project

The Public Law Section provided volunteers for the MSBA Habitat for Humanity project in St. Paul during June 2 - 4, 2003.



"And this is why I went to law school."



"Who put up this dry wall anyway?"



"What do you mean I missed a spot?"



The Monday group gets a lesson on "mudding."



"Now how long did he say to make the tape?"

Loaves and Fishes...

June 4, 2003: Most of the regulars again showed up to cook and set up for the Loaves and Fishes program. And, of course, for the Juicy Lucys at Matt's afterwards.



"I think we're ready."



"I've never made lemonade for 300 before."



The Crew at Holy Rosary and...

(The crew is left to rt.: Patty Moses, Tom Kalitowski, Nancy McLean, Aimee Zweber, Al Harris, Nancy Gove, Leann Lundberg, Kim Mesun).



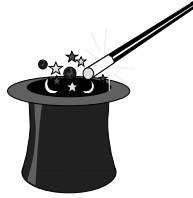
at Matts.

If you are interested in volunteering for the October 1, 2003 Loaves and Fishes project contact Nancy McLean at <Nancy.McLean@hennepin.co.mn.us>. The PLS sponsors the Loaves and Fishes program the first Wednesday in October, December, February, April, June and August.

Amaze Your Friends with Dump Dinner

By: Kim Buechel Mesun

Amaze your friends. Invite them to dinner and serve them "Dump Dinner!" Take my word for it, their reactions will be priceless. First you need to set the stage (or the table in this case). There are no plates, no utensils, just a heap of good food in the center of the table, and warm French bread, sticks of butter and small bowls of cocktail sauce at each corner. I use a plastic tablecloth and give each guest a wash cloth for a napkin.



Directions:

Shrimp-boil spices: In a 12" x 12" piece of cheesecloth, combine 6 parsley sprigs, 3 bay leaves, 3 garlic gloves (peeled and halved), 3 strips of lemon peel, and 1 tsp. black peppercorns. Gather up corners and tie securely; close with white kitchen string.

In a very large pot bring half a potful of water to boil. Add the shrimp-boil spices and salt and boil for five minutes. Cut the Kielbasa into chunks; cut the ears of corn-on-the-cob in half. Add the Kielbasa to the boiling water. Boil for 20 minutes. Add the corn to the cook pot. Boil for four minutes, and then add the pea pods. As soon as the pea pods are in the pot add the shrimp. Cook for three minutes or until the shrimp turns pink. Drain the meat, shrimp and vegetables in a large colander (in more than one batch), remove the spice bags and dump the food into a heap in the middle of the table. Call in your guests and watch their reactions. Even the most uptight person tends to loosen up after they start digging in. A couple of bottles of wine served with dinner also doesn't hurt.

Enjoy!

Dump Dinner recipe:

1 (3oz.) bag shrimp-boil spices for each 3 to 4 persons
Water
2 tbsps. salt for each 3 to 4 persons
½ ring of light Kielbasa per person
2 ears corn-on-the-cob per person
1 handful pea pods per person
½ lb. unshelled uncooked shrimp per person
1 chunk French bread per person
4 sticks (1 lb.) butter or margarine, softened
4 small dishes of cocktail sauce

Public Attorneys on the Move

Michael Norton has left his position as Deputy City Attorney in the Civil Division of the Minneapolis City Attorney's Office to join the law firm of Kennedy and Graven.

Election Results:

The following people were elected to the Public Law Section Executive Council at the annual meeting on May 16, 2003:

Co-chairs: **James Alexander**,
U. S. Attorney's Office
Dianne Ward,
Ramsey County Attorney's Office
Secretary: **Louis Thayer**,
Minnesota Department of Human Services
Treasurer: **Kim Buechel Mesun**,
Minneapolis School District General Counsel's Office

Council Members: **Diane Alshouse**,
Ramsey County Public Defender's Office
Tom Frost,
Hennepin County Attorney's Office
Judge Tom Kalitowski,
Minnesota Court of Appeals
Warren Sagstuen,
Hennepin County District Court
Mary Miller,
Minnesota Department of Labor and Industry (filling second year of Greg Brooker's term)

They will be joined by returning Council members: **Marcy Harris**, *Community Action for Suburban Hennepin*, **Jay Heffern**, *Minneapolis City Attorney*, and **Harriet Sims**, *Minnesota Department of Revenue* and Student Liaison **Aaron Marcus**, *University of Minnesota Law School*.

Announcements

Governor Pawlenty Appoints Seven to Sentencing Guidelines Commission

Governor Tim Pawlenty announced the appointment of Darci Bentz, Steven Borchardt, Jeffrey Edblad, Tracy Jenson and Michael Williams and the reappointment of Lorie Gildea and Constance Larson to the Minnesota Sentencing Guidelines Commission. All seven are appointed to four-year terms that expire on January 1, 2007.

Darci Bentz, of Fairmont, is the managing attorney in the Fifth Judicial District public defender's office in Fairmont. Bentz replaces Jodie Carlson as a representative of public defenders.

Steven Borchardt, of Rochester, is the Olmsted County sheriff. Borchardt, whom the Governor has also designated chair of the commission, replaces Nobles County sheriff Kent Wilkening as a representative of county sheriffs.

Jeffrey Edblad, of Cambridge, is the Isanti County attorney. Edblad replaces Olmsted County attorney Raymond Schmitz.

Lorie Gildea, of Minneapolis, is an associate general counsel for the University of Minnesota. Gildea, who has been a member of the commission since 2001, is reappointed as a public member.

Tracy Jenson, of Stillwater, is a Washington County probation officer in the adult supervision division. Jenson replaces Robert Knickerbocker as a representative of probation officers.

Constance Larson, of Waseca, is the mother of Cally Jo, who was sexually assaulted and murdered in 1999. Larson, who has been a member of the commission since 2001, is reappointed as a felony crime victim.

Michael Williams, of Minneapolis, is a pastor and founder of On Fire Ministry Christian Center. Williams replaces Mary Howard as a public member.

The Minnesota Sentencing Guidelines Commission develops and maintains rational and consistent sentencing standards which seek to reduce sentencing

disparity, increase proportionality in sanctions, and ensure more equitable and uniform sentencing for convicted felons. The commission consists of 11 members, including seven appointed by the Governor.

Good Bye Margaret Olson!

A great public servant and fan of the Public Law Section community service projects is retiring from the Hennepin County Attorney's Office (HCAO).

Margaret Olson will be retiring in August after more than 30 years with Hennepin County. Margaret spent her early career years as a Hennepin County probation officer and the last seven years as the personnel administrator at the Hennepin County Attorney's Office. Margaret will relax and enjoy gardening, friends and family, and her family's lake home near Aitkin, Minnesota where she grew up.

In her HCAO job, she has had the opportunity to bring many bright and eager young lawyers into the realm of public service. Margaret mentored and encouraged many of the top young public lawyers in the Twin Cities area. She has developed and maintained wonderful relationships with all the career service directors and tapped their resources when an opening occurred in Hennepin County. She was ever present at all the local public service career fairs and the annual Twin Cities Minority Recruitment Conference. Margaret advocated for young lawyers to choose public service as a career.

Margaret has been one of the stalwarts of many PLS community service projects. She has worked on several Habitat projects, is a regular at Loaves & Fishes, and a participant in our holiday Adopt-a-Family program. She is committed to continuing this link to PLS and all the friends she has made through her tireless work on these projects.

Good luck Margaret and thank you for all the great work you have done!

*If you have a Public Attorney on the Move notice or other Announcement you would like included in the newsletter send it to Kim Mesun at:
<Kim.Mesun@mpls.k12.mn.us>*

Upcoming CLE Seminars

Date	Time	Seminar	Location/Sponsor/Contact
9/14/03	1:30 to 5:00 pm	2003 National Conference of Hearing Officials.	Millenium Hall, Minneapolis NAHO and MSBA PLS Louis Thayer, (651) 296-2384.
9/15/03	8:30 am to 5 pm	2003 National Conference of Hearing Officials.	Millenium Hall, Minneapolis NAHO and MSBA PLS Louis Thayer, (651) 296-2384.
9/16/03	8:30 am to 3 pm	2003 National Conference of Hearing Officials.	Millenium Hall, Minneapolis NAHO and MSBA PLS Louis Thayer, (651) 296-2384.
9/17/03	8:30 a.m. - 11:30 am	2003 National Conference of Hearing Officials.	Millenium Hall, Minneapolis NAHO and MSBA PLS Louis Thayer, (651) 296-2384.
10/12-15/03	TBA	International Municipal Lawyers Association Conference.	Minneapolis Hilton More info contact < http://www.imla.org/conference/index.html >.
10/15/03	3 p.m. - 5 pm	If Life is a Circle, Why Not Sentencing?	7 th Floor Conf. Room, US Bank Center, St. Paul Ramsey Cty Bar Assn., Katie Moore Generue, (651) 222-0846.
11/19/03	3 p.m. - 5 pm	Pro Se Litigants.	7 th Floor Conf. Room, US Bank Center, St. Paul Ramsey Cty Bar Assn., Katie Moore Generue, (651) 222-0846.
November	TBA	Prosecuting Domestic Violence.	TBA Minneapolis City Attorney's Office, Jay Heffern (612) 673-3272.
12/17/03	3 p.m. - 5 pm	Court of Appeals Update.	7 th Floor Conf. Room, US Bank Center, St. Paul Ramsey Cty Bar Assn., Katie Moore Generue, (651) 222-0846.
1/23/04	TBA	The Legal and Political Implications of the US as the World's Only Superpower.	TBA, Law & Inequality Journal U of M Law School, Aaron Marcus, (612) 237-1734.

To include a notice of an upcoming CLE in the next issue, contact Mary E. Miller 651/284-5306

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 (651)296-6733 or 800/657-3721. The full text of the Data Practices Opinions are available online at <www.ipad.state.mn.us>.

No. of Opinion	Date of Opinion	Gov't Entity Involved	Topic	Requestor
03-005	2/2/03	Department of Economic Security (D.E.S.)	Covered wage & employment program data – on maps and derived from data on maps.	Hines for D.E.S.
03-006	3/12/03	ISD #709	Complaint about employee Z that that contains data about complainant X and about Y; redaction.	ISD #709/Rupp & Girouard
03-007	3/12/03	ISD #146	Summary of Board of Education conclusions regarding superintendent performance evaluation; Open Meeting Law.	Hartmann
03-008	4/3/03	MN State Colleges & Universities (MnSCU)	Identity of professors affected by contract provision; details of compensation categories.	MNSCU/Olson
03-009	4/15/03	Department of Health	Trade secret; Operating Agreement of Minneapolis PET Center, LLC and Minnesota Oncology Hematology, PA.	Minneapolis Radiation Oncology/Freeman
03-010	4/23/03	ISD #284	Athletic event & school hallway videotape; photographs of employees and students; redaction of videotape.	Beilfuss for ISD #284
03-011	5/7/03	Minneapolis	Complaints about city council members; employees?	Minneapolis/Heffern
03-012	5/7/03	Hennepin County	Timeliness of response; consent for release to third party.	X and Y
03-013	5/13/03	McLeod County	Information on the X's; child protection matter; basis for copy charge.	Mr. & Mrs. X/Plisner
03-014	5/23/03	Minneapolis	RFP data; consent to release.	Minneapolis/Heffern
03-015	6/2/03	Department of Public Safety	Videotape of Minneapolis Police Department and state patrol pursuit; response or incident data.	Van Pilsum for Fox 9 News/KMSP-TV
03-016	6/3/03	Department of Education	All correspondence with ISD #11 regarding special education.	Pachl

Habitat Project (cont.)

Tuesday, June 3 was Public Defender Day coordinated by Hennepin County Public Defender Mary Moriarity and Ramsey County Public Defender Diane Alshouse.

Wednesday, June 4 was Hennepin County Courts Day. Coordinator was Patty Botes. Volunteers were: Peter Albrecht, Gary Larson, Hans Larson, Jon Sommerville, Melanie Gorczyca, Mark Thompson, Philomena Saice, Deb Bowser, Debra Schumacher, Mary Regan, Markeitha Wilson, Gena Evans, Corine Morales, Tom Seisker, Mary Gagne, Laurie Kusek, Jim Wehr, Steve Pihlaja, Lynn Fuchs, and Jodi Stanislawski.



Monday, June 2 Habitat for Humanity Volunteers (left to rt.) Front row: Tom Kalitowski, Nancy McLean, Harriet Sims, John Kirwin, Angie Helseth, Kim Mesun. 2nd row: Terri Froehlke, Mary Miller. Standing: LeAnn Lundberg, 2 Habitat staffers, Al Harris. Missing from photo: Lenny Axelrod.



PB&J experts Al Harris and Nancy Gove at June 4 Loaves & Fishes..



The April 3 Loaves & Fishers crew: (left to rt.) Nancy Gove, Tom Frost, Steve Fouts, Nancy McLean, LeeAnn Lundberg, Sonya Stevens, Margaret Olson, Kim Mesun.