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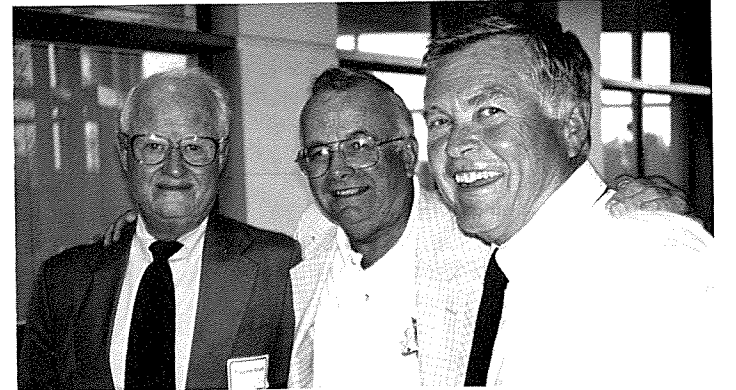
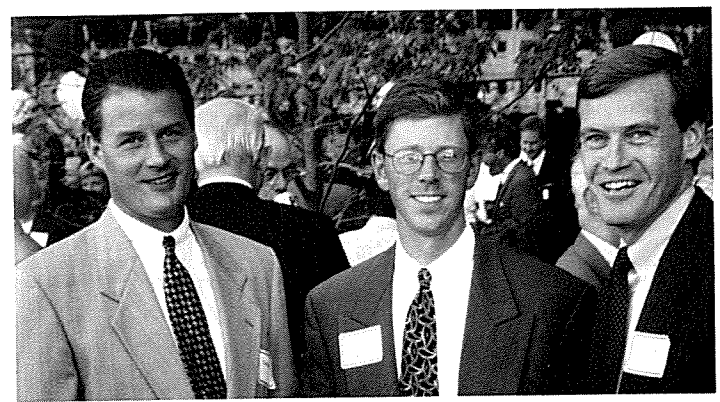


Omaha Bar Association

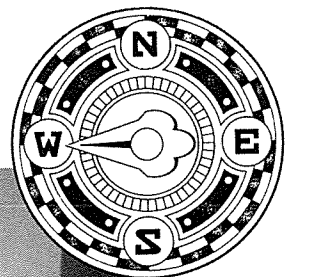
NEWSLETTER

Vol. XXII No. 1

December, 1998



OBA GOES WEST



PRESIDENT'S COLUMN

Sherlock Holmes: I am intrigued, Watson, by the curious incident of the dog in the night.

Dr. Watson: But, Holmes, the dog did nothing in the night.

Holmes: That was the curious incident. Arthur Conan Doyle, "Silver Blaze"

As I write this column, immediately after Election Day, I am pleased to note there was no organized resistance to the retention of any local Judge in this election season. That is particularly significant in light of the **Judge Lanphier** debacle in 1996, and the current anti-lawyer, anti-judge climate in our body politic.

The OBA sends its congratulations to **Judges Carlson, Corrigan, Davis, Amdor, Ashford, Barrett, Johnson, Crnkovich, Thomas, Brown, Cavel** and **Coe**.

The lack of opposition speaks well of our local Judiciary.

Since the writing of my last column, all the events surrounding the **Douglas County Law Library** of which you're familiar have transpired. **Bob McGowan, Jr.**, the Library Committee Chairperson, writes in detail about events in his column. This is an ongoing saga. I will be in touch with you, perhaps frequently, in the future about this topic.

In regard to the Library, I am pleased to advise that a \$13,000.00 gift from the **Lane Scholarship Foundation** has been granted. This should help in the search for alternative sources of funding for the Library.

Please remember in your thoughts past OBA President **Ken Weiner**, whose wife Judy passed away suddenly and unexpectedly in October. **Judy Weiner** was Action Editor of the **Omaha World Herald** and a great lady. She will be missed.

Ken himself has recently been awarded the honor of being appointed an ex-officio member of the Executive Council of the OBA. This was done because of Ken's long-standing contributions to, and interest in, the OBA. He joins **Terry Macnamara** as one of two ex-officio "sages" to sit with the Council.

I am continuously impressed by the widespread unhappiness in our profession. Every recent ABA survey attests to the profound dissatisfaction in

the law. Rick Allen's recent article in **The Nebraska Lawyer**, "Lawyers: Are We A Profession In Distress," reviewed the depressing surveys and statistics. (Rick is the Director of the NSBA's Lawyer's Crisis Program).

Lawyers tell me all the time how abysmal they feel. One well-known and senior lawyer told me recently if he could, he would work in a book store. Lawyers are leaving the profession in droves. Those who stay lead lives of quiet - and not so quiet - desperation.

What to do? I wish I had the answer. From time to time in the past, I have felt the glittering prizes offered in the practice turning to ashes in my



mouth. These feelings come to most lawyers from time to time.

The lawyer who truly loves his or her work has found a prize above rubies. My mentor **Marvin Schmid** used to say he couldn't wait to get to work in the morning to see the bristling accumulation on his desk. A rare feeling indeed.

This may sound vainglorious, but I have concluded, as perhaps some of you have, that the only way to look at the suffering we must endure as lawyers is to view it as a strengthening, purifying force which will ultimately make us stronger and better.

Last June, following the 30th anniversary of the death of Robert Kennedy, the **New York Times** ran an editorial summing up what his life - often marked by suffering and tragedy - meant. The **Times** said:

Robert Kennedy's personal story reaches so close to the national core that it may live as long as the country does. It is a version of the

old legend of a knight who purifies himself through great suffering to prepare for a holy quest.

This interpretation of suffering I offer to those in the profession who are carrying around pain.

If you see a fellow lawyer down-hearted or despairing, or ready to pack it all in and get a real life, do what you can to help. Otherwise, our profession will consist entirely of the walking wounded.

Once again, we will give **Professor Joe Allegritti** of Creighton Law School the last word:

For many lawyers, work becomes their entire life. Everything else suffers - families and friends fall by the wayside, hobbies are forgotten, health is jeopardized - in their ceaseless effort to work more, do more, accomplish more. I have seen lawyers spend so much time at the office it becomes their surrogate home. I have listened to a senior partner at a prestigious law firm say that his only friends were his clients, because only with his clients did he feel that he was doing something **real**.

If we are to smash the idols of work, we must first ease up on ourselves, and let go the nagging suspicion that without our accomplishments and our corner offices we are at bottom nothing.

If we do not do this, we may become like the man whose gravestone was spotted in a Scottish cemetery: Here lies John MacDonald, Born a man, Died a Grocer.

Born a man, born a woman, but died a grocer, a lawyer, a priest, or a painter, as if work and work alone gave meaning and purpose to life.

PLEASE NOTE:

The Omaha Bar Association phone number is incorrect in the new NSBA Directory. Please correct your copy to read: **342-3786**. Also, Lawyer Referral Director is **Donna**...

EXECUTIVE DIRECTOR'S COLUMN

Finally after all these months, I can acknowledge the **Lathrops' contribution** to the OBA office in conjunction with the remodeling of the "new law library." **David, Steve, Matt** and **Chris**, along with their mother, chose that the contribution made in

worked very, very hard on this project and their work is much appreciated. The other attorneys involved are **Hon. Elizabeth Crnkovich, Vernon Daniels** and **Mark Dickhute**. Thanks to them, too, especially since due to technical interference, the tape had to be filmed

Hope you all have a very happy holiday season and much happiness in 1999. . .Mardee

SUPERVISORY STAFF ATTORNEY — U.S. COURT OF APPEALS

The Office of Staff Attorneys for the U.S. Court of Appeals for the Eighth Circuit has an opening for the position of Supervisory Staff Attorney, located in St. Louis, Missouri. The Supervisory Staff Attorney is responsible for training new staff attorneys, serving as a resource on substantive issues, and editing legal memoranda. Applicants must be graduates of an accredited law school, must be currently admitted to practice before the highest court of a state or territory of the United States, and must have superior skills in legal research, analysis, and writing. The Court is an equal opportunity employer. Applications should be submitted to Senior Staff Attorney, U.S. Court of Appeals, Eighth Circuit, 1114 Market Street, Room 642, St. Louis Missouri 63101. Applications must be received by **December 15, 1998**.



honor of their dad and husband, **David Sr.**, president of the Omaha Bar Association in 1977-1978, would go to this office.

On October 2, the Creighton Law Library Dedication ceremony was held. We were able to personally show the Lathrops the office and take pictures. This was certainly a special day for many people. It was a project that was finished after much thought, work and gratitude to those who contributed.

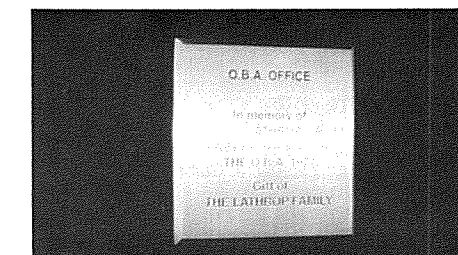
We cannot say "thank you" enough to this family for thinking of the Omaha Bar Association. If you have not seen the office, please stop in...**Donna** and I are very proud of it.

As I've said before, the Executive Council often becomes a close-knit group and when something sad happens to one of its members, it affects all of us. Such is the case with the passing away of **Judy Weiner**, Ken's wife and Aaron's mother. Ken has always been such a strong supporter of the OBA and so was Judy. When Ken was president, Judy was especially active. She was always so "upbeat" and smiling. Our prayers, support and friendship go to both Ken and Aaron to help them through this difficult time.

I now have the VCR tapes of the "Village of Sheepfold Versus Joey Wolf Crier." **Nancy Dickhute**, coordinator of this project, said this tale of the boy who cried wolf is a "direct, straightforward way to demonstrate the jury process. The concept of someone lying is an easy concept for children to grasp." The tape is geared toward children of approximately fourth grade level. Nancy and her assistant, **Shaun James**,

two times!!!

Speakers since the last Newsletter are **Michelle Miller, Dan Smith, Joe Jordano** and **Ron Comes**. The Omaha Bar Association received a very nice letter from **Kenneth Merkel** saying what a great job Ron Comes did at his seminar and also commenting that the Speakers Bureau was an excellent service of the bar association. I have often thought that we have a large group of speakers that are willing to



speak on an extensive array of subjects but actually we don't get that many calls. If any of you hear of someone needing a speaker, please remember us! It is just a small part that makes the **OBA worth its weight in gold**...

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CIVIL JURY VERDICTS

Editor's Note: Every effort is made to insure accuracy. However, if you note an error in your case, please drop a note to the OBA office.

**Douglas County District Court
July through September, 1998**

Compiled by
Michael F. Gutowski & Mary Lee Skaff

911-132 Vicki J. Gans v. Overland Management et al

Judge: Joseph S. Troia
Attorneys:
Plaintiff(s): Kenneth Cobb
Defendant(s): J. Joseph McQuillan
Case: Premises Liability
Specials: \$163,145.00
Verdict For Defendants
Remarks: Plaintiff sued landlord for negligently failing to prevent intruder from entering premises and assaulting her.

927-192 Montgomery Ward v. Weitz Co. et al

Judge: Stephen A. Davis
Attorneys:
Plaintiff(s): Richard Berkshire & Angela L. Burmeister
Defendant(s): David J. Houghton & David S. Woodke
Case: Property Damage
Specials: \$409,439.00
Verdict: For Plaintiff \$102,944.15
Remarks: Plaintiff alleged Defendant negligently caused water main rupture which damaged business premises.

936-642 Richard Billingsley v. BMF Liquor Management, Inc.

Judge: John D. Hartigan, Jr.
Attorneys:
Plaintiff(s): Robert V. Broom
Defendant(s): Jeffrey A. Silver
Case: Age Discrimination
Verdict: For Plaintiff \$64,433.81
Remarks: Back Wages: \$4,469.88 (unanimous verdict); Age Discrimination: \$59,963.93 (10-2 verdict)

936-804 Steven M. Chelberg v. Guitars & Cadillacs of Nebraska

Judge: Robert V. Burkhard
Attorneys:
Plaintiff(s): Eugene P. Welch
Defendant(s): Joseph S. Daly
Robert A. Wichser
Case: P.I., Slip & Fall
Specials: \$28,165.54
Verdict: For Plaintiff, \$4,590.00
Remarks: Jury found Plaintiff's total damages to be \$9,000.00 but also assessed him with comparative negligence of 49%.

940-637 James Fitzgerald v. Van Waters & Rogers

Judge: Joseph S. Troia
Attorneys:
Plaintiff(s): Michael G. Goodwin
Defendant(s): David J. Schmitt
Case: P.I., Auto Accident
Specials: \$16,386.00
Verdict: For Plaintiff, \$75,420.00
Remarks: Jury found Plaintiff's damages to be \$83,800.00 but reduced verdict for 10% comparative negligence

945-887 Tiffany K. Deberry & Marty C. Deberry v. Kevin M. Knoch

Judge: Robert V. Burkhard
Attorneys:
Plaintiff(s): Gregory Schatz
Defendant(s): Christopher J. Tjaden
Case: P.I., Auto Accident
Specials: \$11,116.00

Verdict: For Plaintiffs \$10,000.00 (Tiffany), \$250.00 (Marty - Husband's loss of consortium claim)

947-752 Dawn Binstock v. State Farm Mutual Auto

Judge: J. Patrick Mullen
Attorneys:
Plaintiff(s): Richard J. Rensch
Defendant(s): Joseph K. Meusey
Case: Insurance Contract
Specials: \$12,552.85
Verdict: For Plaintiff, \$12,552.85
Remarks: Plaintiff was injured in auto accident; Defendant denied payment of medical bills claiming treatment not reasonable or necessary. Plaintiff has pending motion for attorney fees and costs of \$26,957.13

951-334 Anthony Martin v. Richard Matlock, Jr., et al

Judge: John D. Hartigan, Jr.
Attorneys:
Plaintiff(s): Steven J. Lefler
Defendant(s): Ternan Siems
Case: P.I., Auto Accident
Verdict: For Plaintiff, \$8,768.70

952-645 Sonya Kuhl v. Michael Chatterton, et al

Judge: Joseph S. Troia
Attorneys:
Plaintiff(s): Amy S. LaFollette
Defendant(s): Jay L. Welch
Case: P.I., Auto Accident
Specials: \$3,413.00
Verdict: For Plaintiff, \$127.00
Remarks: Defendant admitted liability

954-697 Lavera M. Lavell v. Brenda L. Shirley, et al

Judge: Mary G. Likes
Attorneys:
Plaintiff(s): Jerry Alexander
Defendant(s): Thomas J. Culhane
Case: P.I., Auto Accident
Specials: \$20,517.94
Verdict: For Plaintiff, \$115,000.00

957-113 Cynthia Boylan v. Liberty Mutual Fire Insurance Co.

Judge: J. Patrick Mullen
Attorneys:
Plaintiff(s): Mark A. Weber
Defendant(s): Thomas D. Wulff
Case: Insurance Contract
Verdict: Plaintiff's damages = \$75,000.00
Remarks: 11-1 verdict Plaintiff had received \$100,000.00 limits from other driver's insurance. She alleged damages in excess of that amount and sued her carrier under her underinsured motorist coverage. Defendant offered to confess judgment for \$1.00. The jury found her damages to be, as indicated, less than the limits.

958-373 Robert Schaffer v. Tony C. Mantell

Judge: Robert V. Burkhard
Attorneys:
Plaintiff(s): John W. Wilke
Defendant(s): Patrick M. Flood
Case: P.I., Auto Accident
Specials: \$10,763.00
Verdict: For Plaintiff, \$1,000.00

958-420 Suzanne Smith v. Werner Enterprises, et al

Judge: Stephen A. Davis
Attorneys:
Plaintiff(s): Vincent M. Powers
Defendant(s): Walter R. Metz, Jr.
Case: P.I., Auto Accident
Verdict: For Plaintiff, \$28,327.83

958-957 Diane Brown v. Roger Schlax

Judge: J. Patrick Mullen
Attorneys:
Plaintiff(s): Tiffany N. Cloth
Defendant(s): John Burnes
Case: P.I., Auto Accident
Specials: \$636.88
Verdict: For Plaintiff, \$10,845.48

960-943 Angela Janacek v. Cynthia Boone

Judge: Theodore L. Carlson
Attorneys:
Plaintiff(s): Richard H. Schicker
Defendant(s): William H. Selde
Case: P.I., Auto Accident
Specials: \$2,021.00
Verdict: For Defendant

963-778 Brian S. Hanson v. Kevin Rens

Judge: Lawrence J. Corrigan
Attorneys:
Plaintiff(s): James R. Welsh
Defendant(s): Michael F. Coyle
Case: P.I., Auto Accident
Verdict: For Defendant

**SARPY COUNTY CIVIL JURY VERDICTS
For August, September, October, 1998**

Compiled by Mary Lee Skaff

Doc. 9571 No. 1021 Dennis M. Ratigan v. KDL Inc. d/b/a Sundowner Bar

Judge: Gerald A. Thompson
Attorneys:
Plaintiff(s): William J. Pfeiffer
Defendant(s): J. Joseph McQuillan
Type: Negligence
Special Damages: Medical, \$25,764
Verdict: Defendant
Comments: Plaintiff alleged Defendant was negligent in failing to protect him from injury by another customer.

Doc. 9773 No. 208 Karen Keyes-Tesch v. William Roth

Judge: Ronald E. Reagan
Attorneys:
Plaintiff(s): James A. Adams
Defendant(s): Michael J. Mooney, Jr.
Type: PI Auto
Special Damages: Medical \$4,437; Property \$2,351
Verdict: Defendant

Doc. 9773 No. 565 Elliott J. Hawkins v. Driver Management, Inc. and Werner Enterprises

Judge: George A. Thompson
Attorneys:
Plaintiff(s): Tim J. Kielty
Defendant(s): Walter Metz, Jr.
Type: PI Auto
Special damages: Medical, \$5,300
Verdict: Plaintiff, \$868

Continued on page 5

Continued from page 4

Nebraska District Court
Lancaster County

537-121 Timothy McFadden v. Winters & Merchants Inc.,

Judge: Donald E. Endacott
Attorneys:
Plaintiff: Jim Bruckner
Defendant: Dan Ketcham
Case: Contractor's Negligence/P.I.
Specials: \$88,000 meds/\$240,000 wages
Verdict: For the Defendant

Doc. 96-WY-2711-CB Olga Rodriguez-Galindo, d/b/a El Rancho Restaurant, and Federico Galindo v. Tower Insurance Company, Inc.

Judge: U.S. District Judge Clarence Brimmer, Wyoming
Attorneys:
Plaintiff(s): Deana R. Dagner, Walberg & Dagner, P.C.
Defendant(s): William E. Gast
Case: Insurance Fraud
Specials: \$120,000 business, \$30,000 contents
Verdict: For Defendant

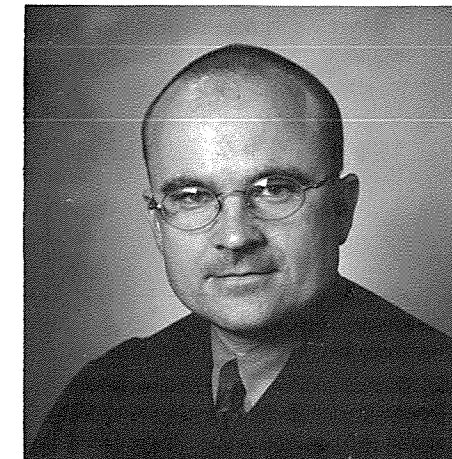
Pottawattamie County, Iowa,
District Court pages 18 and 19.

SUPPORT YOUR ADVERTISERS

SARPY COUNTY GETS NEBRASKA'S YOUNGEST JUDGE

By: Mary Lee Skaff

Todd J. Hutton, Sarpy County's newest County court judge, is well known to OBA members who hang



around the courthouse. He graduated from Creighton in 1990, and served as Deputy County Attorney in Douglas County before going into private practice in Sarpy County. At 34, he is the youngest judge on the bench in

Nebraska. He was sworn in by his father-in-law, the **Honorable John D. Knapp**, of the 12th Judicial District in Scott's Bluff, who admits to being the oldest judge on the bench in the state.

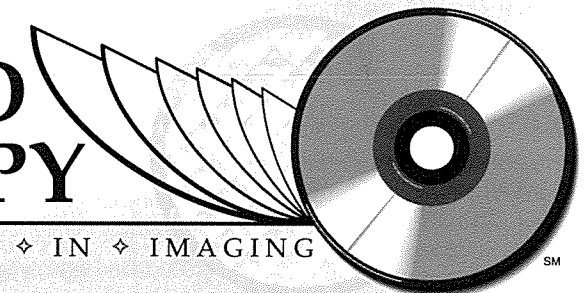
Judge Knapp performed the wedding when **Hutton** married OBA member **Jane Hutton** in 1995. **Hutton** comments, "It seems like I have to raise my hand and swear to something every time I see my father-in-law." Since they are at the extreme east and extreme west of Nebraska, they do a lot of traveling on I-80.

Hutton says that he is enjoying every minute of his new judicial duties, and that he particularly appreciated the warm welcome he received from the other judges in Sarpy County and the supportive work relationship that exists between the judges. By the time this goes to press, he will have his own office; meantime, he has been sharing office space with **Judge Robert C. Wester**, putting the collegial spirit to the test.

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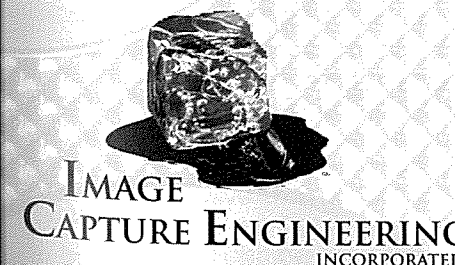
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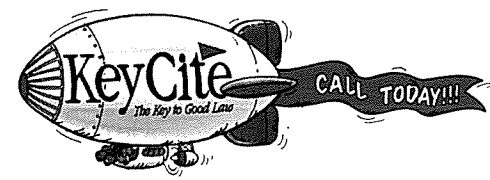
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What Do the Barristers' Plan This Year???

As Autumn gives way to Winter, snow flakes spur us on to think of holiday gifts and gatherings with family. That first Christmas carol, which will soon ring in our sleep like the dripping of a neighbor's leaky faucet, is still wistfully anticipated.

With the gay colors, good cheer and brotherly love of the season, the great minds of the Omaha Bar naturally turn to the perennial question: I wonder what those Barristers have up their sleeves?

Well, as we all surely know by now, the Barristers Christmas Party is neigh upon us. It is slated for Thursday, December 10, once again at the Holiday Inn Central. Tickets are on sale now. Contact Matt Lathrop, or any of the Barristers Officers to place your order.

"But," you may ask, "what is the show, and what the Barristers do there?" The Christmas Show first and foremost is only called that because the president this year is a Catholic. In years to come you can expect the Hanukkah Cabaret, the Agnostics' December Show, and the Chairman Mao's Year of the Tapir People's Celebration. One should not attend anticipating anything close to the Carpenters' or Andy Williams' Christmas Shows.

Indeed, there will be an amazing lack of singing talent compared to these fine performers. What can be expected is a fresh look at our state and local bar members and some of the headlines they created.

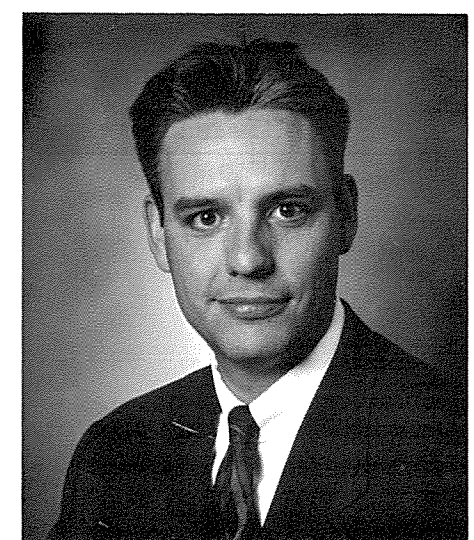
You may remember the loveable, laughable, yet amazingly objective Citizens for a Responsible Judiciary. We'll have a special report on what this organization did during the November elections. Because they're prime targets, Chief Justice C. Thomas White and Justice D. Nick Caporale, announced their retirements this year. Rumor has it CRJ took a loss of approximately \$20,000, all accounted for in blood red yard signs which became useless over night.

We will also check in with the Omaha Humane Society Director for possible explanations for the shocking rise in sex crimes involving animals in the Metro area in the past year. Are our courts treating these offenses seriously? And do we need tougher laws? We'll have an exclusive interview with one of latest victims, Greg Dane.

There will also be a special guest this year from one of Omaha's local

business telephone directory publishers. He will be showing Party attendees how the yellow pages are created and designed. He will also demonstrate what happens when a directory client changes its name, address or type of service or business; explaining the process of "No Refunds."

The Barristers Club has recently elected a top notch group of young minds to move the organization one



President Matt Lathrop

year closer to the Twenty First Century. This year's officers include Matt Lathrop, Grand Poo-bah; Glenn Shapiro, Vice Poo-bah; Mary Steier, Comptroller; Scott Calkins, Parliamentarian; Pat Bloomingdale, Liaison to Government Affairs; Scott Lautenbaugh, Token Republican; Chris Lathrop, Golf Pro; and George Thompson, Dean of Academic Affairs. For ticket information contact any one of the officers. Their names are easily accessible in the Bar Directory, or if you need Glenn Shapiro's number, it's all over the holding tank at the District Courthouse. Ticket prices will be similar to last year's, however, we are still waiting for Mary Steier to come up with our year end numbers to let us know how badly we must gouge attendees to clear a profit.

ATTORNEY Large Omaha area law firm is seeking an attorney with two years experience in estate planning and taxation. Send resume to P.O. Box 3484, Omaha, Nebraska 68103-0484.

Courts Committee "Up and Running"

By: John W. Wilke

Omaha Bar Association President Mike Nelsen has the Court's Committee "Up and Running" once again. The Committee (one of the largest OBA committees) met in October at La Strada 72 Restaurant for a noon luncheon meeting to hear Federal District Court Judge Joe Bataillon speak about his new job, the new courthouse and federal court in general.

In mid November, the members met again at La Strada to hear Mr. Frank Goodroe, our new Douglas County District Court Administrator, talk about taking over Darwin Severson's job. Darwin retired earlier this year due to health problems. He was honored by the OBA on October 22 at Happy Hollow Country Club during the OBA's monthly dinner meeting.

Mr. Goodroe joins us from the Michigan Court of Appeals in Lansing where he was the Court Administrator.

The Courts Committee will meet approximately every 6-8 weeks to bring together the members for informative meetings, guest speakers and an exchange of ideas and input.

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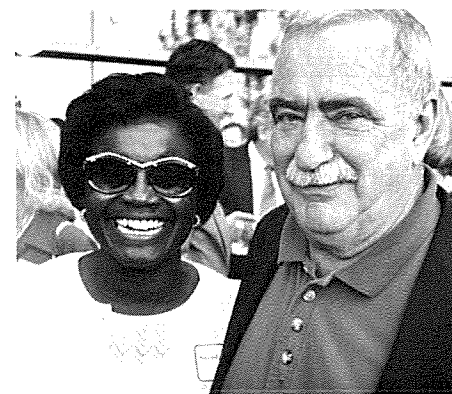
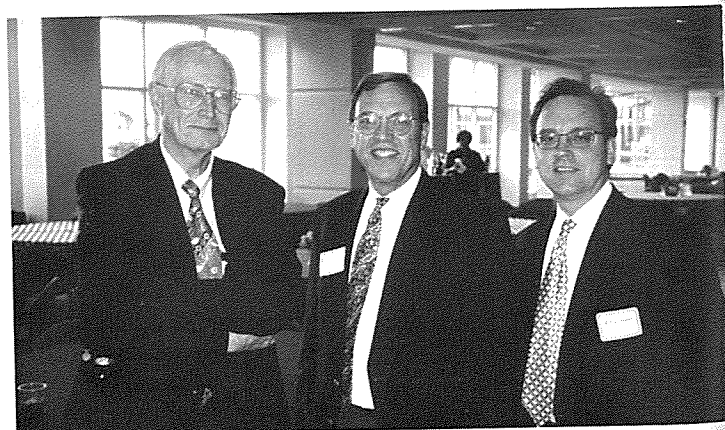
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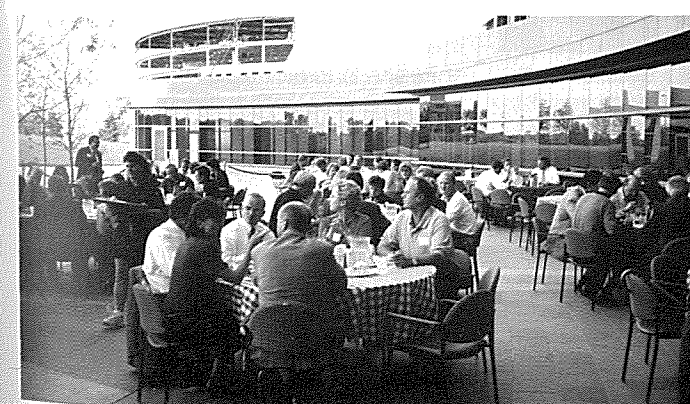


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University of Nebraska-Lincoln, 1987,
Employee Benefit



John J. Borghoff
Creighton University, 1981,
Personal Trust



Kathy Callahan
Creighton University, 1983,
Personal Trust



Geraldine Clanton
Creighton University, 1983,
Personal Trust



Marc Diehl
University of Nebraska-Lincoln, 1966,
Division Head



Elizabeth T. Foster
Creighton University, 1981,
Personal Trust



Thomas J. Gaughen
Creighton University, 1978,
Business Development



Harold B. Kosowsky
University of Nebraska-Lincoln, 1966,
Head, Trust Administration



Steven R. Kryger
Creighton University, 1978,
Personal Trust



John E. Lenihan
Creighton University, 1975,
Corporate Trust



Deborah D. McLarney
Creighton University, 1984,
Personal Trust



Janet Melchior-Kopp
Creighton University, 1988,
Personal Trust



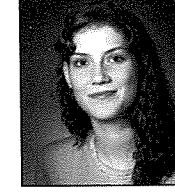
H. David Neely, Sr.
University of Nebraska-Lincoln, 1953,
Personal Trust



John T. Stark
University of Nebraska-Lincoln, 1982,
Business Development



Ilene U. Steele
University of Wisconsin-Madison, 1983,
Employee Benefit



Michelle Ueding
Creighton University, 1995,
Employee Benefit



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LINDSEY MILLER-LERMAN TAKES HER SEAT AS NEBRASKA'S FIRST FEMALE SUPREME COURT JUSTICE

By: Jill Harker

At first sight, **Justice Lindsey Miller-Lerman** appears almost child-like: small and slender with long dark hair and a bright smile. This illusion is dispelled somewhat with her strong handshake and direct gaze, but when the Justice begins to speak, the listener knows this woman is not diminutive in any way, but is a charismatic and distinguished individual. When I first met Justice Miller-Lerman, I brought up the topic of children, and she told me about the film her twenty-three-year-old son **Jeremy** had just finished as the result of his participation in New York University's Film Workshop. It was his first independent film project.

She described how Jeremy's friends who had been associated with filming had been in and out of her house over the past few months and then boasted that she hoped to be included in the movie's credits . . . as the caterer. While this was not the sort of admission one would anticipate from a Nebraska Supreme Court Justice, the fact of her admission was proof positive of the enormity of her appointment. By this one appointment, the Nebraska Supreme Court will receive something it has never had before: **the perspective of a woman and a mother as seen through the eyes of a lawyer and a judge**, and a brilliant one at that.

Lindsey Miller-Lerman is an import to Nebraska by both birth and education. Born and raised in Los Angeles County, California, Justice Miller-Lerman began college at U.S.C. after finishing high school in only three years. A year later, she left the West Coast to attend Wellesley College as part of the class of 1968, a year ahead of First Lady **Hillary Rodham Clinton**. Justice Miller-Lerman chose Wellesley because of its fine reputation, and she credits her undergraduate institution with providing her with a great education, self-discipline and enduring friendships with fellow classmates. She graduated with a major in political science with the goal of becoming an attorney.

It was 1968. The Vietnam War was going strong. **Justice Miller-Lerman** joined the ranks of bright young women pursuing careers in professions such as medicine, law and academia. She started law school in the fall of 1968 at Columbia University. During her first

year, however, her husband-to-be, who was working on his medical training, received an assignment with the Public Health Service as his military service in another part of the country. They decided to marry in the summer of 1969 and to postpone finishing her training until his assignment was done.



Justice Miller-Lerman returned to Columbia University from 1971-1973. She received a number of honors, including being selected as a member of the Columbia Law Review and a Stone Scholar. As fate would have it, **Ruth Bader Ginsburg**, the U.S. Supreme Court Justice, was one of Justice Miller-Lerman's professors. When interviewed by the press after receiving her appointment to the Nebraska Supreme Court, Justice Miller-Lerman confessed that she had received her lowest law school grade from Justice Ginsburg. Some time later, Justice Miller-Lerman received a note from Justice Ginsburg that congratulated her on her new appointment and teased her about the "low" grade.

After law school, Justice Miller-Lerman was hired to fill a two-year position as a clerk to the Honorable **Constance Baker Motley**. Judge Motley, herself a pioneer in the legal profession, is a judge for the United States District Court for the Southern District of New York. When the clerkship ended, it was Justice Miller-Lerman's turn to follow her spouse to his next professional appointment. He accepted a position with the University of Nebraska Medical Center, and Lindsey Miller-Lerman came to Nebraska.

She was immediately hired by **Kutak Rock** to do securities litigation. Life became a whirlwind of activity. Because her daughter, **Hannah**, was about two years old and **Jeremy** was still an infant, the Justice worked part time so she could spend time with her children. Notwithstanding becoming divorced in 1979, Justice Miller-Lerman continued working on a part time basis until Jeremy started the first grade. She was promoted to the status of partner at Kutak Rock in 1980, about half the time usually required for that achievement.

In 1992, when the Nebraska Court of Appeals was created, Justice Miller-Lerman decided to leave private practice and try for a position on the new court. Of the six new judges selected, **Justice Miller-Lerman** was the only woman. When asked what it was like to start 'from scratch' to define this new and distinct level within the judicial system, Justice Miller-Lerman said, "It always felt like an opportunity to build." There were "growing pains," as the new court assumed its proper place in the hierarchy of the courts. She spoke highly of her colleagues on the court as men who are both well-qualified and congenial. She was selected as the Chief Judge of the Nebraska Court of Appeals in 1996, but she is most proud of having had the opportunity to help establish the Nebraska Court of Appeals as a court of importance within the judicial system and to participate in building its well-reasoned body of law.

Personally, Justice Miller-Lerman describes herself as "task oriented." She enjoys her work and devotes herself to it. When she is not 'on task,' she will spend time with Jeremy or Hannah, age 25, who works at the San Dominico School near San Francisco, or with her long-time companion, **Mike Higgins**. She also enjoys gardening, jogging, and collecting antique quilts.

I could not resist asking the Justice to give me her favorite response to the obvious question she had to have been repeatedly asked by interviewers over the past few months: what it is like to be the first woman appointed to the Supreme Court of Nebraska? With a twinkle in her eye, she said that she was "looking forward to the opportunity to

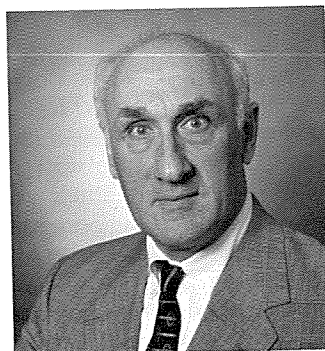
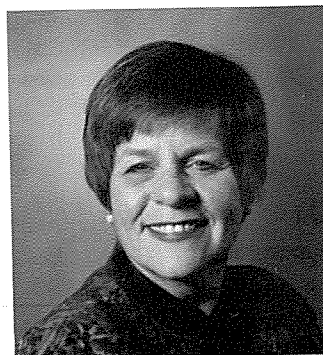
Continued on page 12

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lay down the jurisprudential DNA of a new Court." As a Chicagoan who came to Nebraska via a circuitous route, I could not help asking if she could ever have guessed that she, West Coast born and bred and East Coast educated, would end up deep in the heartland of the country as a justice on a supreme court? The Justice smiled again and said, "Anything can happen in America!"

LAW SUITS OMAHA FALL CAMPAIGN A SUCCESS!!!

By: Julianne Dunn Herzog



Julianne & David Herzog

While politicians locally and nationally continue the debate on welfare reform legislation, Omaha lawyers and friends got together to solve a threshold question of any welfare-to-work program, "What do I wear?"

The Herzog and Herzog law firm agreed to handle coordination and administration. *The Daily Record* agreed to sponsor an ad three times a week to catch the attention of Omaha lawyers who were asked to clean out their closets and donate serviceable business attire. Fashion Cleaners agreed to donate cleaning and delivery services. Together, Inc. stood ready to receive and distribute to people needing business attire to get back to work.

Continued on page 13

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Continued from page 12

And so the fall campaign of the Omaha "Law Suits" program began. No one knew what would happen after the first ad ran in the Daily Record on October 1, 1998. It soon became apparent that Omaha lawyers, judges, and friends were responding enthusiastically. By the end of the 30 day campaign, over 1000 items of business apparel had been given to Fashion Cleaners, the drop off point for donations.

Kermit Engh, owner of Fashion Cleaners, 30th and Leavenworth in Omaha, and his staff are heroes of this story. They completed over \$6,000.00 in cleaning services to put the donated



Photo By Pam Vermillion, Daily Record

items into wear-ready shape for delivery to Together, Inc.

Together, Inc. set up a "Law Suits" corner to receive the business apparel. This multi-faith emergency assistance program located at 1616 Cass in Omaha maintains a year-round clothing store. Those who meet initial income guidelines are permitted to shop free in the store. Those who show proof of an interview or a job get to shop in the "Law Suits" corner.

Since the first delivery from Fashion Cleaners on October 12, 1998, 141 individuals have selected 373 items of "Law Suits" apparel for new job interviews and basic working wardrobes. Over 600 items remain on the racks at Together, Inc. for continued distribution to those in need.

The "Law Suits" spring campaign is scheduled for April 1, 1999. Mark your calendars now!!!

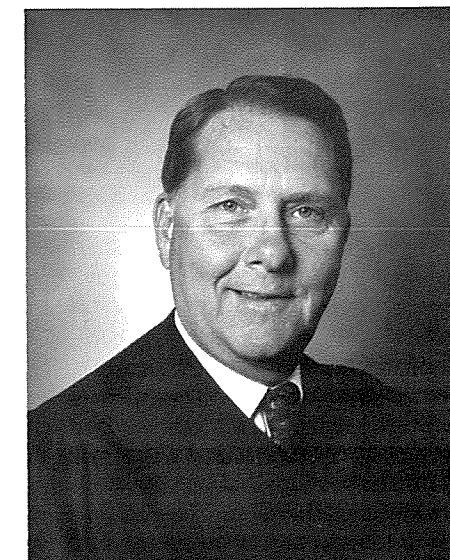
Judge Coffey Gets Used to the Daily Grind

By: Gregory R. Johnson

Following his swearing in on August 28, 1998, new District Court Judge J. Michael Coffey hit the ground running. His first day was the following Monday, and he was faced with the inheritance of retiring Judge Buckley's docket, some 520 cases.

"I was probably a little surprised by the volume of cases," Coffey said. "You definitely don't feel like you have as much control over your calendar because things are scheduled so far in advance."

Along with the volume, Coffey commented on the variety of the cases as well. "As a lawyer you tend to focus your practice towards one area. As a judge you get a little bit of everything. The lawyers that have appeared before me so far have been very helpful in



making me comfortable in my new role. Without some of them the transition would have been more difficult."

Judge Coffey had applied for the bench once before in 1984, when then Governor Kerrey selected Judge Mullen. At that time becoming a Judge was not a primary goal of his, but he wanted to apply to see what would happen. Since that time though it seems a judgeship has continued to be on his mind. "Really it was the last four to five years that I seriously began considering it. I figured after 24 years in the practice, and 14 years since I last applied, I would be in a position to do a good job."

When asked why he was interested in the position Coffey replied, "It was not a consideration of whether I would like it or not, rather a consideration of whether I would be good at it." After completing two months on the bench Judge Coffey is pleased to report that he indeed does enjoy it a great deal, even though that was not the reason for his seeking the position. "I guess I'm lucky on that one," he said.

As to the differences between practicing law and being a judge, he recognized the difficulty in changing roles. "Serving as an advocate and representing parties is something I will miss. A lot of the work leading up to trial I probably will not miss, but the actual trying of the case was something I always enjoyed. As a judge your role becomes more of a listener."

Judge Coffey does not expect his social relationship to change with any of the local attorneys. "Because the District Court is such an active court, I tend to see a great deal of the local attorneys every day. The number of judges and number of cases in our court requires the attorneys to be around quite a bit."

Judge Coffey's goals as a district judge focus primarily on fairness and full consideration of each parties arguments. "In every case there is a winner and a loser. Both sides have merit and you want them to know that you have weighed the evidence and made a decision based on their arguments. Hopefully everyone leaves knowing they have been heard."

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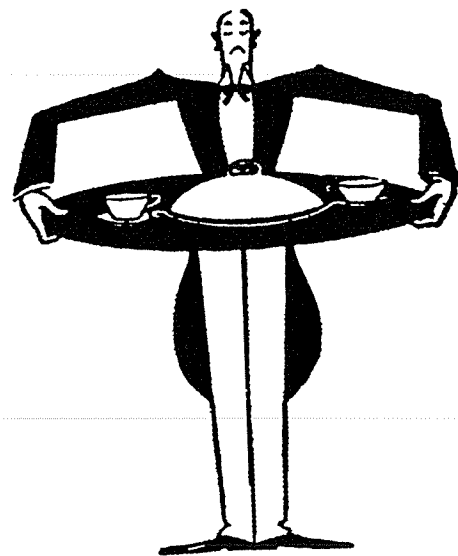
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OBA's October Meeting Featured Mediation Speaker

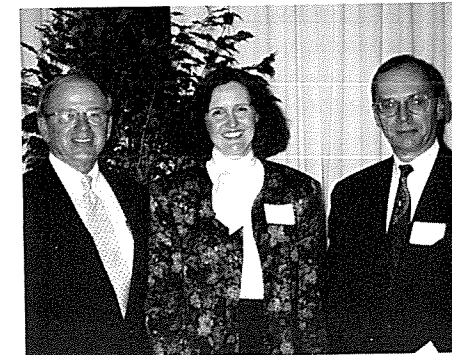
By: Arnie Stern

Lynne Timmerman-Fees assumed the Chair of the OBA Mediation Committee last summer, and the Committee continues to work to enhance mediation as a viable means of dispute resolution. The Committee is enthusiastic about the new District Court rule which makes mediation an integral part of developing Parenting Plans in marriage dissolution cases. As practice continues under the rule, the Committee is convinced that the role of mediation in family law cases will increase.

In order to better educate the practicing bar about the positive role that mediation can play, the Committee arranged for Judge James G. Beasley of Wichita, Kansas, to visit Omaha and to appear at the October 22nd meeting of the OBA. Judge Beasley met at noon with members of the Committee, mediators, and some Judges. He discussed the various ways in which he has utilized mediation in the marriage dissolution process over the last ten or more years.

Judge Beasley met before dinner with a group of mediators, both lawyers and non-lawyers, judges, and others interested in the increased use of mediation in family law matters. It was an opportunity to informally discuss the various issues and problems which can arise. The Judge's insight will undoubtedly prove to be valuable.

As the featured speaker at the OBA meeting, Judge Beasley commended the OBA and the judges



Judge Beasley, Lynne Timmerman-Fees & Mike Nelsen

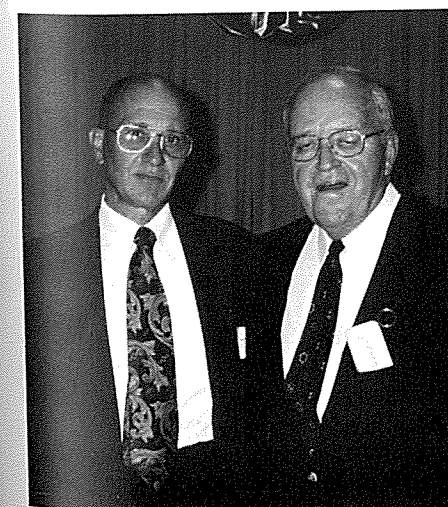


Mike Nelsen & Mimi Amondson

for instituting the program. He felt that the program already has a great deal of vitality and is off to a good start. He told the attorneys present that they had nothing to fear as far as mediation is concerned. The experience in Wichita has been that family law attorneys who are "mediation-friendly" attract more clients. Two Wichita attorneys present with Judge Beasley confirmed that their practices had in fact increased with the advent of mediation.

The Judge also spoke of a unique case management program that he has instituted in Wichita. The program places a non-judicial manager over dissolution cases for post decree adjustments. While the program sounds very interesting, it would require some enabling legislation in Nebraska.

The OBA Mediation committee meets regularly each month in order to keep the cause of mediation alive. We are always looking at new ways to promote mediation and we are ready, willing and able to tell the world about it. If anyone needs a speaker for a group, either bar-related or not, contact Mardee or Donna at the OBA office. The committee will provide a speaker.



Darwin Severson and Judge Murphy
Darwin was honored for his many years at
the Courthouse.

E-Mail Use and Abuse — Miscellaneous Observations

By: H. Daniel Smith

(Continued from last issue)

Confidentiality and Encryption

E-mail confidentiality needs a dose of common sense. While it is true that e-mail is inherently more accessible in transmission than traditional mail, the security concerns, while real and present, are overblown. It has been truly said that the most insecure moment for an e-mail is after it has arrived and been printed out and is sitting on the network printer or on the recipient's desk in printed form. The least secure moments for e-mail and e-mail attachments are during composition and after receipt. Even so, for matters requiring a high degree of confidentiality special precautions should be taken.

Employers', particularly lawyers', need for confidentiality may lead them to consider encryption. Robust encryption can virtually guarantee that sniffers (those who sample e-mail in transmission) will not be able to read the data contained in the packets that they "hear." The text is so garbled that it is completely unintelligible. Spoofers (those who intercept mail by setting their machine to appear to be a certain recipient) are frustrated by this same feature but even if the message itself is not encrypted, i.e., it is transmitted in clear text, encryption can provide substantial certainty that any message received was transmitted by the individual purporting to have sent it. Certain encryption software can even scramble the packet header information (the "address") so that it is impractical to spoof the message at all.

A great deal of current encryption software uses the principle of public-key cryptography. In public-key encryption there are two different keys that are used. One key is used by the sender to encrypt the message and another is used by the recipient to decrypt it. The keys come in pairs; an individual's encryption key is paired with his decryption key. One key cannot be derived from the other, so someone with the encryption key cannot decrypt messages using that key. Alice, an individual who wants to communicate securely, generates an encryption key

Continued on page 16

and a corresponding **decryption key**. She keeps the decryption key secret; this is called the **private key**. She publishes the encryption key; this is called the public key. The public key is made so that anyone can get a copy of it. Alice may e-mail it to her friends, post it on bulletin boards, link it to her World Wide Web homepage, etc.

When someone wants to send a message to a given recipient, first he finds the public key for that recipient. He encrypts his message in the public key and sends the now-encrypted message to the recipient. When the recipient receives it, he decrypts it with his private key. Even the person who encrypted the message to the recipient could not read the message once it was encrypted. He did not have the decryption key.

Today's encryption software is readily available and practical to use, although encryption software may not be as user-friendly as some would like. Also, the administration, distribution, and authentication of a multitude of users' encryption keys is not a trival concern. Cost-effective, and easy-to-use encryption is available for personal computers using Microsoft Windows and for the Macintosh. Although there are other packages in use as well, ViaCrypt PGP (Pretty Good Privacy) could become a *de facto* standard for e-mail privacy. Also, although not a software package but a proposed standard to which encryption software should conform, Privacy Enhanced Mail (PEM) has promise for both privacy and standardization. In some circumstances, it may be vital that the recipient know that he is communicating with his doctor and not an impostor. In addition to ease of use and robust encryption, both PGP and PEM also have the capability of electronically "signing" e-mail messages so that that signature is authenticable. This makes it far more likely that the message came from the purported sender.

The drawback to encryption comes from the human resources management point of view. E-mail can be abused. It can be used to send unwanted messages deemed to be harassing. It can be used for non-business purposes. It could be used to transmit pornography or hate mail. An employer may have an affirmative duty to monitor employee

e-mail. Many employers are now telling employees that they can and will monitor e-mail. In order to do so, the employer must have the technical ability to descramble all encrypted e-mail. This mirrors to some extent the national debate ongoing over privacy of e-mail in which government crime agencies want to be able to view any e-mail.

A related matter, which I will discuss in another article, is **digital signatures**, a matter of vital importance to electronic commerce. Nebraska now has a statute on the matter, and it will become a subject of central importance to how business is done in the future. See L.B. 924, which you may view at <http://unicam2.1cs.state.ne.us/LEGDOCS/BILLFINL/LB924.htm>.

E-mail is subject to civil discovery in lawsuits

You may also want to start worrying about the use of e-mail **by adversaries** in civil litigation. Adversaries can get it all, probably even stuff you thought was erased: In a \$150 million securities fraud case, Siemens sued Atlantic Richfield Co. -- after it had discovered e-mail messages which allegedly demonstrated that Atlantic Richfield had concealed problems with the solar energy product it was selling to Siemens. One message, sent before the sale, stated that "the whole basis for our plan is almost invalid due to the fact that we had been operating under the wrong assumptions for 10 years." Ouch.

E-mail can be used to give mistaken impression of a company - in a trial a jury sees only a small amount about a company -- a lawyer can use inflammatory e-mail to provoke a jury. Where intent is an issue in litigation e-mail can be very effective.

If an employer is using the back-up scheme its IT or MIS people told it to, then somewhere is a tape with everything ever transmitted, unless there is a policy to the contrary.

Many believe that once you hit the "delete" button the e-mail is gone forever. Back-ups aside, computer hard-disks actually retain deleted files for some time until the physical space where the file is located is needed for other data, a somewhat random thing. The index entry which points to the location of the deleted file is simply removed from the index when deletion occurs. Technically adept people can often recover deleted files. Many utility programs make this readily available. If I read the news right, Ken Starr grabbed Monica Lewinsky's computer

and undeleted some juicy e-mails.

Employers should begin educating system users that when they write e-mail they may be writing for the ages, or for the eyes of a jury. Businesses should adopt consistent policies about the maintenance of data, and stick to it. Destruction of data once a litigation begins or a claim is known may be a tort in its own right (Spoilation of Evidence, or Loss of Chance, not yet recognized in Nebraska), or the subject of discovery sanctions up to and including default judgment. On the other hand, courts seem to honor consistently applied programs of data destruction that may have innocently destroyed some data which later became relevant in a lawsuit. Companies should adopt a written policy and stick to it.

Other issues in the use of e-mail include use of company credit cards to do business on the internet, and the security of such transactions; copyright violations by the indiscriminate downloading and proliferation of licensed software from the Net; downloading and use of copyrighted written material from the Net; loss of attorney client privilege by the use of e-mail; unauthorized practice of law by using mail facilities to communicate with newsgroups, etc. I will try to reach all this in the future.

For now, all this scary stuff notwithstanding, lawyers should understand that e-mail is about to become indispensable to their practice. Just like the fax machine, it is going through the cycle from curiosity to commonplace to must-have. As with any innovation, we must use it intelligently, and put policies in place to curb and control abuses and liability exposure.

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The "New" Creighton Law Library

By: Alan Thelen

A newly expanded and renovated Creighton Law Library provides an inviting new environment for legal work and study.

The \$3.6 million construction project, completed this Fall, has increased the size of the Library from 28,300 square feet to 47,964 square feet. The Library was expanded into a portion of the space underneath the existing building which was formerly occupied by outside parking spaces.

"One main goal was to improve the number of group study rooms," said Professor **Kay Andrus**, Director of the Law Library. "There are now nine group studies, seven of which are new. We want to encourage students by providing convenient study areas for them to get together and discuss cases."

The Library is now "properly wired," **Professor Andrus** said. Data ports and electric power are built into every study carrel throughout the Library. Most tables are equipped with data ports and power as well.

The new computer center and classroom is described by **Professor Andrus** as "state of the art." This computer classroom, donated by the **Kutak Rock** law firm, consists of 24 student computer stations, four printers, presentation equipment, flexible lighting options, and a teacher workstation.

The additional space in the Library permits wider aisles between the rows of book stacks than before. The more spacious aisles make it easier to find library books and also comply with the requirements of the *Americans with Disabilities Act*. Public restrooms and an elevator have also been added in the Library.

A new rare book room houses the library's rare book collection. **Professor Andrus** said this room features a glass display case, independent humidity and temperature controls, proper lighting, fire suppressants and burglary alarms. "Our rare books are now housed in a room designed to preserve and protect them for as long as possible," he said.

Perhaps the most visually striking aspect of the new library setting is the

entrance area. The entrance has been widened and now features cherry stained woodwork, beautiful lithographic artwork, and spacious service areas. The artwork series is entitled *The Great Human Race*. It was created over a ten year period by Roland Poska and is a celebration of the human community in 26 large and colorful lithographic prints.

Just past the entrance lies the new grand staircase leading to the lower level. The staircase, with a wide overlooking circular wood railing, "makes a welcoming and very attractive statement," Professor Andrus said.

Actual construction on the project began in May of 1997. The successful project completion is the result of more than eight years of planning, document preparation and revision, meetings, fund-raising, work, perseverance, and good will. Many people contributed time, talent, and money to the project. Donations ranged from \$10 to \$500,000 and came from alumni, parents of alumni, staff, faculty, lawyers, and other friends of the Creighton School of Law.

"When I interviewed for the position of Law Library Director in 1990, the Dean, faculty, and students gave strong indications of support for an expanded and improved facility. Consequently, the completion of this building project is in every way a realization of this necessary and worthy goal. The Dean and I considered our Library's space needs in our first conversation together. So, as you can see, it's been a dream of myself and of **Dean (Lawrence) Rafal** for quite some time," **Professor Andrus** said.

NeALA HOLDS ANNUAL MEETING AND FALL SEMINAR

By: Katherine L. Chase, CLA

On September 17 and 18, 1998, the Nebraska Association of Legal Assistants (NeALA) held its annual meeting and fall seminar at the W. H. Thompson Alumni Center at the University of Nebraska-Omaha. The organization elected the following officers and directors for 1998-1999:

President: **Wayne Baker**

President-Elect: **Joyce Reimer**

Vice-President: **Carol Stohlmann**

Secretary: **Janie Boswell**

Treasurer: **Pamela Richman**

Parliamentarian: **Karen Douglas**

NALA Liaison: **Ann Atkinson**

District 1 Director:

Barbara Bidroski

District 2 Director: **Kimberly Brown**

The seminar presenters included:

Harry L. Capadano, III, Esq.

Kevin M. Saltzman, Esq.

John E. Schembari, Esq.

Marlon A. Polk, Esq.

Jeffrey P. Heineman, Esq.

Sarah Waldman, Esq.

Virginia Korseiman, Esq.

The election and installation of officers was capped off by a social hour open house following the seminar. The open house was hosted by Hauptman, O'Brien, Wolf & Lathrop.

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Marcena Hendrix Joins Bench

On August 14, 1998 **Marcena M. Hendrix** took the oath of office and joined the bench of the Douglas County Court. She filled the vacancy created by the Legislature earlier this year when it increased the number of county judges in Omaha from 12 to 13.

Judge Hendrix chose retired District Judge **Jim Murphy** to administer the oath of office. She stated her reasons as, "I practiced before Judge Murphy for several years and cannot think of a person more worthy of emulation. His temperament, compassion, and sense of justice are of the caliber I want to strive for."

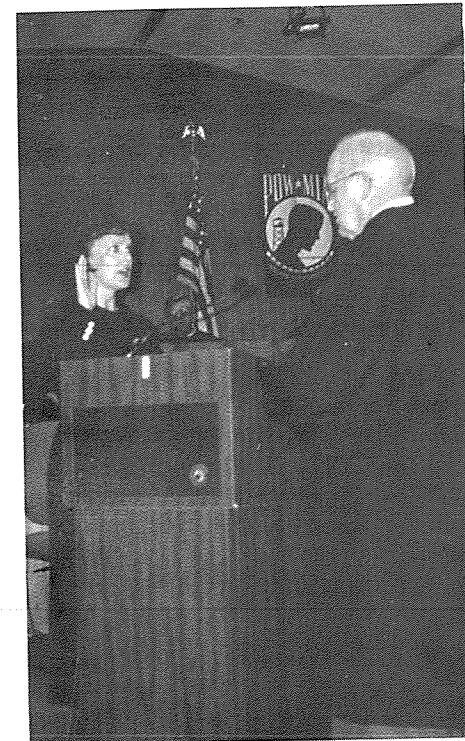
Judge Hendrix was born and raised in Lincoln and received both her undergraduate and law degrees from the University of Nebraska. She worked in the Legislature and had a private practice but spent most of her career as an Assistant Douglas County Public Defender. While in the P.D.'s office Hendrix represented indigent defendants in the County, District, and Juvenile Courts.

She is married to OBA Executive Council member, **Bob Sivick** and credits the OBA for bringing them together. She explained, "I met Bob in 1988 at the OBA Fall Kickoff. I didn't begin dating him until the following year because I thought he was boring and too serious." Laughingly she added, "Hopefully my ability to judge character has improved since then."

Hendrix will be forever remembered as the woman who was engaged to be married in 1994 before 500 lawyers at the Barristers Christmas Show. She remembers it as "a complete surprise. It was the most romantic thing that ever happened to me. To be fair it wasn't all Bob's doing as he had considerable help from our good friends, **Abby Duffy Devin** and **Mike**

Coyle."

She believes it is important that she remain conscious that her words and action affect the way people perceive not only herself but all judges. **Hendrix** went on to say, "The County



Court is the court that most citizens will have contact with during their lifetimes. It is imperative that I treat each individual appearing before me fairly and with courtesy. Anything less is unacceptable." She added, "I want every person who leaves my courtroom whether they prevail or not, whether they are acquitted or sent to jail, to walk out believing they were treated fairly and with a positive impression of the justice system."

A hearty welcome is in order for **Judge Marcena M. Hendrix.**

LOOKING FOR GOLD

The Omaha Bar Association Newsletter is inaugurating a new column, **Looking for Gold.**

Lawyers and legal professionals do good, selfless deeds every single day of their lives without looking for recognition. It's high time **we dig out nuggets of pure selflessness** and hold up the unsung heroes to public view, recognition and applause. We owe it to them. More to the point, we owe it to

ourselves.

But we need **you** - every single member and legal professional - to notice the golden moments and pass them on to Mardee at the **Omaha Bar Association office, 2133 California Street #150, Omaha Nebraska 68178**, telephone number (402) 342-3786.

We will contact the individual to make sure it's okay to publish. If he or she says no - we won't.

JURY VERDICTS Pottawattamie County, Iowa, District Court April 1, 1998 through October 27, 1998

Compiled by
Matthew V. Stierman

70456/05-21-98 Paul Runyon vs. City of Carter Lake, Iowa

Judge: Charles L. Smith
Attorneys:
Plaintiff: Kristopher Madsen
Defendant: Michael J. O'Bradovich
Case: Employment Claim
Verdict: \$65,790.00
Remarks: Currently on Appeal

71527/05-22-98 Teresa Rose Powers, individually and as Next Friend of Andrea Marie Powers vs. William Joseph Powers, Timothy William Schroder and The Prudential Insurance Company

Judge: Charles L. Smith
Attorneys:
Plaintiff: Randall Shanks
Defendant: Marvin Vannier and Christopher Tinley for Schroder; Joseph K. Meusey and Michael F. Coyle for Prudential
Case: Insurance Coverage Dispute
Verdict: For Defendants
Remarks: Declaratory Judgment Action; Currently on Appeal

73866/07-09-98 Rose Large vs. David J. Yochum, Jr. and Assurance Company of America

Judge: Leo Connolly
Attorneys:
Plaintiff: Randall Shanks
Defendant: Philip Willson
Case: Auto Accident
Special Damages: \$29,683.78
Verdict: \$41,183.78
Remarks: Uninsured motorist case

72341/07-25-98 Lennabelle Kilbarda vs. Mary Felt and Wesley Felt

Judge: James M. Richardson
Attorneys:
Plaintiff: Joseph J. Hrvol
Defendant: Lyle Ditmars
Case: Auto Accident
Verdict: For the Defendant
Remarks: Plaintiff assigned 60% of fault, and Defendant 40%

70899/08-13-98 Jean Cain vs. Dillard Department Stores

Judge: Timothy O'Grady
Attorneys:
Plaintiff: Stephen C. Ebke
Defendant: Michael F. Coyle
Case: Trip and Fall
Verdict: For Defendant
Remarks: Plaintiff found to be 60% at fault. Defendant found to be 40% at fault

70794/08-21-98 Patricia D. Riddle, personally and as Next Friend of Bradley J. Riddle, a minor vs. Edward C. Williams and Utilicorp United, Inc.

Judge: Keith E. Burgett
Attorneys:
Plaintiff: Robert Rodenburg
Defendant: John French
Case: Auto Accident
Special Damages: \$33,145.23
Verdict: \$90,145.23 for Patricia
\$ 5,000.00 for Bradley

71638/09-25-98 Tami Hollingsworth vs. Brandy Smith, Glenda Smith and John Smith, II

Judge: James M. Richardson
Attorneys:
Plaintiff: Kristopher Madsen
Defendant: Gregory Barntsen
Case: Auto Accident
Special Damages: \$943.64
Verdict: \$943.64

Continued on page 19

ON THE MOVE

Kristine Dorn associate at Gaines, Mullen. . .**Ernest Wintroub** and **Ken Weiner** relocating their offices to **11725 Arbor Street**. . .**David Stage** and **Shaun James** have joined Gross & Welch. . .joining Kutak Rock is **Brenda Council**. . .**James Napier**, new associate at Zarley, McKee. . .**Michael Leahy** now at Stinson, Mag. . .opening new law office, Welch, White & Wulff, are **Jay Welch**, **Judge Thomas White**, **Thomas White** and **Thomas Wulff**. . .1998 graduate **Kurth Brashear** joining his father, **Kermit A. Brashear** and **Kermit III** at Brashear & Ginn. . .**Debra Fiala Breen** and **Theresa M. Bima-Reeves** have joined Kutak Rock. . .other '98 grads: at Kutak Rock: **Timothy S. Dunning**, **John Glode**, **Patricia Ryan** and **Garrett B.**

Spear-Smith. . .Baird Holm: **Vickie Brady** and **Gretchen Herron**. . .McGrath North: **Kristopher Covi**, **Amy Wallace**, **Dimiter Todorov**, **Jeffrey Penne**. . .Fraser Stryker: **Tracy Edgerton**. . .Sodoro Daly: **Gerald Kratochvil**. . .**more next issue**. . .**Victor Lich** relocating his office to 516 Ridgewood Drive North, Bellevue. . .**Terrance DeWald** now at Mutual of Omaha. . .**Karen Shepard** opening her law office at 300 South 19th Street, Suite #216. . .**Bruce Goracke** has joined Dwyer, Smith. . .**Kathleen Cook** now with Marks, Clare. . .**Steve Maun** moving to HunTel, a Blair, Nebraska, firm. . .**Michelle Peak** joining Union Pacific Railroad. . .

MILESTONES

New Chief Justice of the Nebraska Supreme Court is **John Hendry**. . .New shareholder at Koley, Jessen is **Mark Peterson**. . .New officers for the Nebraska Juvenile Judges Association are: **Douglas Johnson**, President; **Elizabeth Crnkovich**, Vice President; **Wadie Thomas, Jr.**, Secretary. . .named partners at Brashear & Ginn are **Susan O'Hanlon** and **Kermit A. Brashear III**. . .**Milo Alexander** named Executive Director of the Legal Aid Society. . .**Mary L. Hewitt** became a shareholder and

Continued from page 18

72087/09-25-98 Sherie L. Larsen vs. Behrouz Rassek and Neurological Associates of Council Bluffs, P.C.

Judge: Timothy O'Grady
Attorneys:
Plaintiff: Jon J. Puk
Defendant: John French
Case: Medical Malpractice
Verdict: For Defendant

73100/10-01-98 Leslie Harris et al vs. HyVee Food Stores, Inc.

Judge: Timothy O'Grady
Attorneys:
Plaintiff: William R. Hughes, Jr.
Defendant: G. William Smits
Case: Claims of assault, and defamation
Verdict: For the Defendant

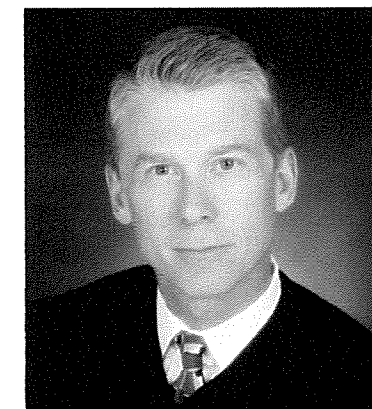
72049/10-12-98 Phyllis A. Brunow vs. Iowa West Racing Association d/b/a Bluffs Run Casino

Judge: James S. Heckermann
Attorneys:
Plaintiff: Randall Shanks
Defendant: R.J. Laubenthal
Case: Slip and Fall
Verdict: For Defendant

68142/10-28-98 Lee L. Gibson and Corrine Gibson vs. Edward C. Williams and Utilicorp United, Inc.

Judge: J.C. Irvin
Attorneys:
Plaintiff: W. Curtis Hewett
Defendant: Phillip J. Willson
Case: Alleged Bad Faith in handling of Workers Compensation Claim
Verdict: \$39,123.00 for Lee Gibson
\$ 7,000.00 for Corrine Gibson
Remarks: Recovery on theories of denial of weekly benefits; denial of psychiatric treatment; abuse of process; negligent misrepresentation; fraudulent misrepresentation; fraudulent concealment; tortious interference with contract and loss of consortium

NOTE: Approximately 5 files were unavailable at the time of my review at the Clerk's Office which may have contained jury verdict information for this time period.



Judge John Irwin

officer of McGill, Gotsdiner. . .**Judge John Irwin** appointed Chief Judge of the Nebraska Court of Appeals. . .**Justice Lindsey Miller-Lerman** appointed to the Nebraska Supreme Court. . .

SPECIAL RECOGNITIONS

Past president of both the Omaha Bar Association and the Nebraska Bar Association, **John C. Brownrigg** was the recipient of the Creighton Law School Alumni Merit Award at the Law School's annual alumni dinner. . .

SENATOR CHRIS ABBOD, 12TH DISTRICT LEGISLATIVE UPDATE

The **Nebraska Legislature** will reconvene January 6, 1999. During the past few sessions a number of bills of interest to members of the Bar were introduced and are likely to be reintroduced next session. I have listed them below.

LB 511, which was introduced in 1997 and is expected to be reintroduced next session, deals with being an accessory to a felony.

In 1998, **LB 1308** was introduced to change the method of inflicting the death penalty. It would allow lethal injection and may be reintroduced.

Also in 1998, **LB 1349** was introduced but did not pass. It would have changed provisions relating to the Child Pornography Prevention Act. This Bill is also likely to be reintroduced.

LB 244, which was introduced in 1997, would have allowed the learned treatise exception to the hearsay rule under the Nebraska rules of evidence to be permitted.

The sexual predator act, introduced in 1997 as **LB 323**, is expected to be reintroduced. It is similar to current law dealing with sex offender registration, but would enhance penalties and require counseling.

In 1977, **LB 442** proposed changes relating to product liability. It is likely that this or a similar bill will be reintroduced.

In 1977, **LB 601** was introduced to create the crime of indecency with a child. It also is likely to be reintroduced. In related measures it is likely that the Legislature will revisit changes to child custody determinations (**LB 884**, 1997) and child support guidelines (1997, **LB 885**).

Another bill of concern which may resurface is **LB 1353**, which would establish the office of Community Corrections and provide for local boards and financial aid for programs.

Other possible issues which may arise are domestic violence clean up language, teen court programs, cattle liability problems, the same sex marriage ban and concealed weapon legislation.

FOOT NOTES FROM THE LAW LIBRARY

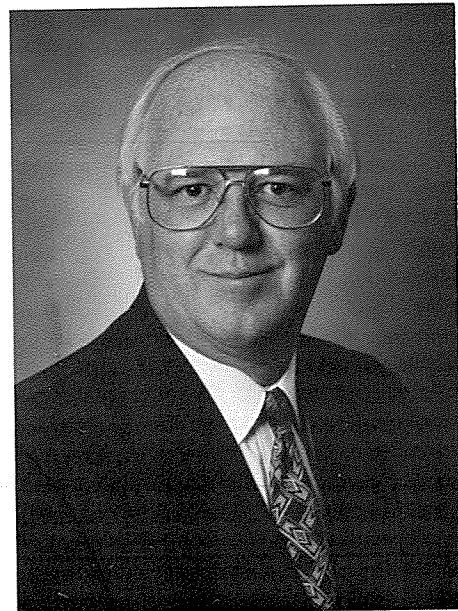
By: Bob McGowan, Library Chair

Did you ever stop to think how busy a place the **Douglas County Law Library** really is? It averages about 100 to 150 users a day. This is an estimated 26,000 to 39,000 visits per year. The users range from government employees (the judiciary, government attorneys, and all other state and local government agencies), the practicing bar, and a surprising number of citizens from the general public at large. The three copy machines crank out approximately 200,000 copies per year. About 3,000 copies flow out of the library every single week. At any one time about 150 books are checked out and circulating. Amongst the practicing bar, the library has 410 active membership accounts. An active account is a law office, law firm, or business registered with the library. An additional 20 government offices are registered users as well. Membership privileges include monthly credit billings for photo copy charges, and the right to check out books on the shelves, all for a modest annual fee.

Consider for a moment how comprehensive the library is itself. And I am not talking about the physical space. In addition to complete holdings of all specifically Nebraska related legal materials, the County Law Library maintains an extensive federal collection, the statutes of all 50 states, all of the state and federal national reporters, numerous legal treatises, practice reference, and loose leaf services. In all, some 30,000 volumes grace its many shelves. Yes, the County Law Library is a big operation. Complete with a big price tag!

Parallel with almost all other government programs, Douglas County's Law Library budget has seen steady increases over the years. For fiscal 1997-1998 the approved budget was \$161,110. For fiscal 1998-1999 it was requested that the funding of the library be increased 9.4% to \$176,275. Two-thirds of the requested \$15,000 increase was earmarked entirely for books and subscriptions. In contrast with most other government or business undertakings, however, personnel resources have never been the largest part of the funding need. Books themselves have always been the numero uno budget item. The actual books and subscriptions expenditures in recent years have been as follows. For fiscal 1995-1996 it was \$90,015. In

1996-1997 book purchases totaled \$108,310. For 1997-1998 the figure rose to \$114,855. Book expenditures represented 68.09%, 71.54%, and 71.98% respectively of these three budget years. If the requested 1998-1999 budget was approved by the commissioners, \$125,000 would have



been spent for core book and subscription purchases. The reduced budget as approved allocates \$95,000 for books, still two-thirds of the budget.

This year the law library budget has been a hot topic amongst the seven members of the Douglas County Board. The commissioners understand they are not legally mandated to provide a law library for the citizenry. The Board is correct. Neb. Rev. Stat. §51-220 states that a county board may, in its discretion, when it shall deem it advisable, provide for a suitable law library. By the same statute libraries established are placed under the local control of the district judges of the county wherein the library is located.

At an August 24, 1998 public hearing to consider the proposed budget, those members of the bar association and public present were collectively told by the county board that the pressures on the commissioners to finance unfunded state and federal mandates were requiring the board to take an extremely close look at all programs and operations the county wasn't legally obligated to provide, and that the county law library fell into this

latter category.

Within the commissioners ranks came a proposal to reduce the library budget request by \$60,000. The proposed cut in funding was met with abundant opposition by individual members of the bar, all of the local judges, and the Omaha Bar Association itself. Speaking to the commissioners at the August 24 public hearing were **Judge John Hartigan** for the district court judges, **Mike Nelsen**, president of the OBA, and myself, in my capacity as chairman of the OBA law library committee. During the hearing the commissioners communicated their clear desire that the practicing bar must search for ways to secure alternate, future funding, in whole or in part, for the library. Ultimately the County Board reduced the requested library budget by \$30,000, to \$145,541 for the fiscal year now underway. Again, \$95,000 of the approved budget will go strictly for books, subscriptions, computer services and the like.

By now all members of the OBA should have received in the mail a survey form to be filled out specifying the preferences of the memberships regarding possibilities for future library funding. If you have not completed and returned your survey please do so immediately. It is highly important that you do so. If you have misplaced or lost your survey then complete the form found on page 21 in this newsletter. Send it back to **Mardee** at your earliest opportunity. At such time as the survey results are tabulated the findings will be reported to you.

A Law Library Advisory Committee is being formed to explore alternate funding sources. Led by **Judge Hartigan**, the committee consists of **Judges Amdor, Davis, Randall, Johnson, Hendrix, and Cavel**. Representing the Omaha Bar are **Mike Nelsen, Bob McGowan, and Harold Rock. Frank Goodroe**, the new district court administrator, and Commissioner **Mike Boyle** round out the committee. The new committee is gearing up for its first meetings. If you have any suggestions or comments regarding ways to fund the library feel free to contact any one of the committee members. And send in those surveys! The results will provide much needed guidance and direction with which the advisory committee can begin its work.

FUTURE OF COUNTY LAW LIBRARY — WHAT ARE YOUR THOUGHTS???

As you may know, the Douglas County Board of Commissioners has voted to reduce its longstanding practice of fully funding the Douglas County Law Library. Certain Commissioners have publicly stated that the financial responsibility for the County Law Library should be borne by attorneys, not the County. The Executive Council of the Omaha Bar Association wants your input on this important issue. Please answer the questions below, give us your additional thoughts and comments, and return this Survey to the **Omaha Bar Association** (if you have not done so).

1. Do you support the continued existence of the County Law Library? Yes/ No
2. Should the Omaha Bar Association be involved in helping to find solutions to the budget needs of the County Law Library? Yes/ No
3. Do you favor any of the following actions or activities:
 - (a) Charging a user fee? Yes/ No
 - Daily Yes/ No
 - Monthly Yes/ No
 - Quarterly Yes/ No
 - Annually Yes/ No
 - (b) Raising Omaha Bar Association dues to include a surcharge for County Law Library? Yes/ No
 - \$5 a year increase? Yes/ No
 - \$10 a year increase? Yes/ No
 - \$15 a year increase? Yes/ No
 - Amount should vary with years of practice? Yes/ No
 - (c) Creating a charitable foundation to raise funds to support the County Law Library? Yes/ No

- (d) Sponsoring an annual Omaha Bar Association fundraiser for the County Law Library? Yes/ No
4. Do you know of any individual, firm, corporation or entity that might be interested in making a

contribution to such a project? Yes/ No
If so, please identify _____

5. Additional comments or suggestions: _____

Return to the Omaha Bar Association, 2133 California, 68178

MILT ABRAHAMS: A HISTORY IN THE LAW

By: Sandra L. Maass

In 1927, as the Great Depression was lurking on the horizon for the United States, **Milton ("Milt") Abrahams** received his law degree from Creighton University and embarked upon a legal career that continues today, 71 years later. In 1983 Milt returned to Creighton to receive the **Alumni Merit Award for the School of Law**, an award given annually to an outstanding graduate of



he saw greater opportunities in California. He packed up his wagon and headed for California with the intent of sending for the family when he got settled. It was hazardous traveling during those days and Morris was never heard from again.

Abraham's grandfather, **Max**, started the Omaha Furniture and Carpet Company in the late 1870s. Milt's father, **Edward**, later ran the business until it was closed in the 1930's. Milt was born in Omaha in 1905, the elder of two sons.

Milt never had much interest in entering the family business. As a youth, Abrahams said, he was taken with books. He became a voracious reader, frequenting the city library. He says that that was when his love for libraries started.

By the time he graduated from Central High School in 1922, **Abrahams** decided to enter Creighton University. He became editor of **The Creightonian**, the campus newspaper, which nearly got him booted from school. "I wrote an editorial that, let's say, wasn't what the administration wanted to hear," Abrahams said. "The president called me in and said he was expelling me from school. I remember cleaning out my locker, scared as hell, when the dean stopped and said the president wanted to see me again. He wanted me to agree that he could see any editorial before it was printed, and I told him I couldn't do that. So we

the school. A brief review of Milt's career exemplifies the meaning of the award and its recipient.

Milt's family history in Omaha can be traced back to the Civil War years when his great grandfather, **Morris**, moved his wife and family to Omaha from Nashville, Tennessee. In the 1870's

Continued on page 22

Continued from page 21

talked and it was decided that when I was going to run an editorial that might be controversial, I would let him know about it ahead of time."

Dr. John Vance, the Abrahams family's physician, continued to point Milt towards a law career. As Milt puts it, "he kept telling me I would make a good lawyer and that set pretty well with me."

When he received his law degree upon graduating at the top of his class, Milt found that jobs in the law practice were hard to find. He was offered four positions with law firms to do messenger-type work at \$50 per month. Abrahams concluded that he could do better on his own so he practiced with his classmate **Richard O'Connor**. They sublet minimal space with ancient desks and chairs in the Peters Trust Building, then at the northwest corner of 17th and Farnam Streets.

Abraham's first project as a new lawyer was to learn his way around the courthouse and city hall. Milt and O'Connor devoted several days to calling on all of the lawyers in their building to find out how they broke into the practice. "Not only did the lawyers answer questions, but a number of them volunteered to give us guidance from time to time and to send us legal matters that they did not want to handle," Abrahams said.

"Some of the lawyers we had been talking to referred a scattering of matters to us, for the most part personal injury cases that looked like losers," Abrahams said. Small items came to him from family and friends, but for quite a while they mostly watched trials at the courthouse, read how-to books on the practice, kept in touch with the other lawyers and worried about the future.

One of the highlights of his earlier experiences was sharing the good fellowship that prevailed when lawyers came together at **the call of jury cases in Courtroom No. 1 on Saturday mornings**. Abrahams obtained verdicts in his early personal injury cases in an amount close to or in some instances, well above what was sought in settlement. Suddenly, he developed credibility as a litigator.

Meanwhile, Abrahams was beginning to represent various businesses, chiefly small ones, but also a few larger ones. He found an area that seemed like a dream come true. Instead of a short one-time relationship with a client who had a personal injury

case, he was enjoying a close ongoing relationship with the owner or operator of a business. "The better I came to understand the client's circumstances and needs, the closer the relationship became," Abrahams said.

In 1944 Milt formed a new firm with **Ben Kaslow**. The firm continues today as Abrahams, Kaslow & Cassman, with 23 attorneys. In the early years the firm grew with routine trial work. It wasn't until the late 1950's and early 60's that Abrahams was able to switch his law practice primarily to corporate work.

Despite the success he has achieved as an attorney, Abrahams feels some of his most important work has been done outside his law practice. In the 1950's, when he was involved with an Urban League leadership post, he would devote one day a week calling on businesses convincing them to hire black employees.

After the Orpheum Theater closed as a privately operated movie house in the early 1970's, Abrahams was involved in saving the historic former vaudeville house from the wrecking ball by helping establish the Omaha Performing Arts Center Corporation. In 1973, \$1.5 million dollars in bonds was raised to fund the restoration of the facility.

Milt has been an active participant in religious, civic and community affairs. He has served on dozens of boards, including those of Joslyn Art Museum, the Omaha Public Library, Omaha Board of Education, Omaha Human Relations Board, the Legal Aid Society, the Omaha School District Board, United Way, Metro Arts Council, Nebraska Methodist Hospital and its Foundation, and the Omaha Symphony, and has been chair of many of those boards. The city's newest branch library, located in Northwest Omaha at 90th and Browne, was named in his honor.

"I'm glad I spent as much time as I did in community work because I found it often gave me a deeper sense of satisfaction than I experienced in the day-to-day practice of law," Abrahams said. "Although I have enjoyed my law practice, it is repetitive when you are able to push yourself back and see what you have accomplished."

Although Abrahams has been one of Omaha's most community conscious citizens for more than six decades, he never had any interest in seeking public office. Abrahams states, "I wouldn't be able to bring myself to ask

for the funds necessary to run." While Milt has never felt the urge to run for public office, he is known as an insider from whom people running for office often seek counsel.

Abrahams believes that everyone has a responsibility to be involved in affecting political issues. "Everyone has to support those people you think will be beneficial to that end," he said. "You have to think about your children and your grandchildren and what kind of country will they live in. Everybody has something to contribute to the betterment of our city, state and country. To not take part is to lose that privilege. **The thing I would like people to say about me is that somehow I made some small positive difference in the great scheme of things.**"

Abrahams, who was president of the Omaha Bar Association in 1959 said, that he is concerned about the shortage of entry level positions for recent law school graduates. He advocates raising law school admission standards and reducing enrollment as one way of addressing the problem, "I probably like law more than any other field I could have gotten into, but I feel that today there is often a lack of civility and less of the collegial spirit which used to characterize the profession," he said.

When asked about the changes in the profession, Abrahams states, "We were more free-wheeling years ago when I was starting my career." One reason he cites for the changes is that "there is much more of a business aspect to law practices now with a much greater amount of attention being given to the number of hours applied to each matter."

Several years ago, a **World Herald** reporter writing a feature called "Getting Personal" questioned Abrahams on certain things in his life. Abrahams was asked to name his pet peeve. His answer: "Intrusions into our daily lives by bureaucrats who are often arbitrary, impersonal, indifferent to the consequences of their actions, and preoccupied with preserving their own status." As America approaches the beginning of another century, Abrahams' hope is that families will place more emphasis on the importance of reading.

Milt claims to have retired in 1991 to become counsel to Abrahams, Kaslow & Cassman. However, Milt still appears at his office by 8:30 a.m. every morning and leaves no earlier than 4:00 p.m. daily.

Meet OBA's Officers and Executive Council 1998-1999

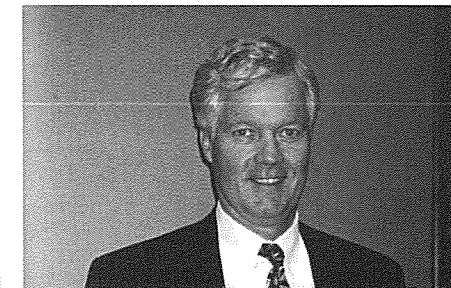
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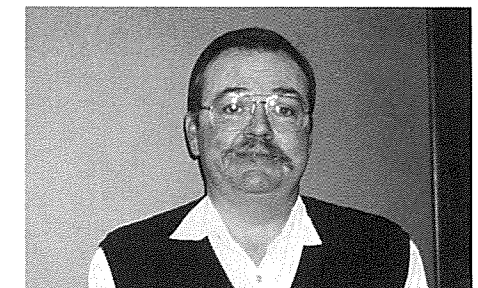
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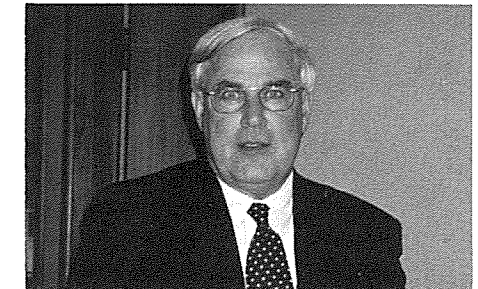
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EDWARD G. WARIN



OMAHA LEGAL PROFESSIONALS ASSOCIATION

By: Jean Roeder

Our seminar at Creighton University on October 17 was worth the money. Those who attended the session on computer research and the debate on Word versus WordPerfect all gained a new respect for what is available to us if we can but access it!

The new law library is impressive. If you haven't seen it yet, I'm sure **Kay Andrus** would be willing to show off his new "digs."

Our Association is doing some fund raising over the next couple of months for the scholarship fund. We are also adopting a family through the Salvation Army as our community service project. We will be shopping and preparing some holiday surprises for them. We'll be having some fun, too, at our own holiday party.

The Association has some new members, and we can always accommodate more. Encourage your legal professionals to partake of our informative programs and the chance to network with their peers. Everyone wins!

Omaha Law League (OLL) needs your help with providing funding for gavels for 800-900 4th graders touring the Hall of Justice and Civic Center in the Spring of 1999. If you or your firm are interested in being part of the courthouse tour program, please call **Mary Stultz**, OLL Courthouse Tour Coordinator, **551-6075**. Your support will be appreciated.

Omaha Bar NEWSLETTER

Omaha Bar Association
2133 California Street
Omaha, Nebraska 68178

CALENDAR

November:

30 Mon. District Court Jury Session
(3 weeks)

December:

1 Tues. County Court Jury Session
10 Thurs. Barristers Christmas Party -
Holiday Inn

14 Mon. Happy Hanukkah - (First Day of . . .)
25 Fri. Merry Christmas

January:

1 Fri. Happy New Year
21 Thurs. Breakfast with **Mike Fenner** - Embassy
Suites, 555 South 10th Street -
7:30 a.m.

February:

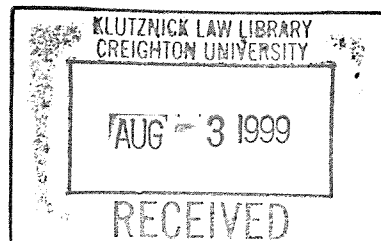
16 Tues. OBA "Fun" Night at the **Dubliner Pub**
with **Tom Riley** and his band - 7-9 p.m.



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