Message from the Dean

It is an honor to join the Creighton University School of Law community as your next dean. We have a long and proud tradition of educating excellent lawyers who transform the lives of the clients and communities that they serve. The dedication of our faculty, staff, students and alumni to this mission is humbling and exciting.

I would like to thank Marianne Culhane for her 38 years of service to the law school, the last five as dean. Dean Culhane was a dedicated administrator, teacher and scholar; her legacy can be seen in our graduates who are making a difference in our profession and the world.

We wish her well in retirement, along with longtime professor Ralph Whitten and associate dean Eric Pearson. You can read more about their remarkable service to Creighton law on Page 4.

In joining Creighton, I am eager to work in collaboration with faculty and staff colleagues, alumni, students, donors and community members to advance the School of Law. We have a tremendous opportunity to not only bring other disciplines to our law students, but to offer study of the law to students in other schools and colleges across campus.

Creighton’s Jesuit, Catholic mission is inspiring and life-affirming. I feel a strong connection to that mission: I attended a Jesuit high school in New York, where I learned the importance of serving others while tutoring at a grade school in the Bronx. The Jesuit experience was instrumental in forming who I am today.

The law school serves that bold mission by educating lawyers who act on St. Ignatius’ charge to, “Go forth and set the world on fire.” We do that by taking seriously the mission to go into the world and meet people where they are. At the law school, we meet our students where they are through a challenging classroom environment, academic advising and peer tutoring. And in clinics, externships and seminars, we prepare our students to meet their clients and communities where they are.

This mission is lived by faculty and staff colleagues who are committed to our students and alumni. As I have come to know and work with them, I have found a supportive academic community engaged in a wide range of activities that support our students and alumni. It is enlivening.

The real measure of our success, however, is you — our graduates. I have found Creighton law alumni to be leaders in the profession and their communities, living lives of service to others. It is inspiring.

My sincere thank you to those who have welcomed me and my family, and made us feel at home. I look forward to meeting more of you as, together, we move the School of Law forward to a greater tomorrow.

Paul McGreal
Dean
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Creighton Law’s First Female Dean

Marianne Culhane first joined the School of Law faculty in 1977. In 2010, Culhane became the 10th dean of the School of Law since its founding in 1904 and the first woman to hold the position. She also served as interim dean from 2007 to 2008.

“Dean Culhane was a powerful influence for good in the life of the law school and in the lives of many, many law students. We at the law school owe her a great debt of gratitude for her excellent service,” says law professor Craig Dallon.

Culhane taught commercial law courses, including secured transactions, banking regulation and bankruptcy. She published numerous articles and books, including several empirical studies of consumer bankruptcy with her colleague professor Michaela White. Culhane has been involved with many professional services, including the editorial board of the American Bankruptcy Institute Law Review. She has served on the board of trustees of the Iowa Law School Foundation and Marian High School in Omaha, as well as the boards of the Omaha Legal Aid Society and the American Board of Certification, for which she served as dean of faculty.

In 2003 Culhane was the Robert Zinman Scholar-in-Residence at the American Bankruptcy Institute’s headquarters in Alexandria, Va. She is also a fellow of the American College

Marianne Culhane
> Dean, Professor of Law (served as dean from 2010-15 and as interim dean from 2007-08)
> Joined Creighton law school faculty in 1977
> 38 years at Creighton

Longtime Law School Faculty Retire

Three admired and respected members of the School of Law have ended their years of teaching, administrating and mentoring students at Creighton with their retirements this summer.

Marianne Culhane, Eric Pearson and Ralph Whitten have dedicated more than a century of service to Creighton University. The campus community will forever be grateful for their vast contributions.
of Bankruptcy. In 2009 she was named the Southeastern Bankruptcy Law Institute Distinguished Visitor at Georgia State University Law School in Atlanta.

Culhane is the recipient of a number of awards, including the Kelley Award for Outstanding Achievement in Collaborative Research. She was inducted into Alpha Sigma Nu, the Jesuit honor society in 2015. She is also the current president of Creighton’s Phi Beta Kappa chapter.

Prior to joining Creighton, Culhane was an associate at the law firm of Eisenstatt, Higgins, Kinnamon, Okun & Stern in Omaha. She also served as a law clerk to the late Judge Donald Lay of the U.S. Court of Appeals for the Eighth Circuit, where she met (and later married) Tom Culhane, JD’74.

Mentor and Scholar

Eric Pearson joined the Creighton University School of Law faculty in 1980 as an associate professor of law and has served as professor of law since 1984. In July 2012, he took on additional duties as an associate dean. After 35 years of service to Creighton, he retired this summer.

Pearson has been an invaluable member of the law school community and during his time at Creighton has produced an impressive body of scholarship. His writing has largely focused on water rights and environmental and constitutional issues. In addition to an array of articles, Pearson is the author of a major casebook on environmental and natural resources law, currently in its fourth edition.

Pearson also has been a frequent recipient of the Outstanding Faculty Member Award, which is given each year by the law school’s graduating classes. Upon his retirement, the award was named in his honor as the Eric Pearson Outstanding Faculty Member Award.

Pearson has always embraced the governing principle that the welfare of students is Creighton’s first responsibility and has been a friend and mentor to students.

“Dean Pearson has been a mentor for me on many levels,” says third-year law student Spencer Murphy. “His retirement may end his role as a professor, but it will certainly not end his role as a mentor for many students and alumni. I am honored to say that I am one of them.”

From 1972 to 1976, Pearson was an assistant attorney general for the Commonwealth of Pennsylvania. After earning a Masters of Law in environmental law from the National Law Center at George Washington University, he served as an attorney for the Office of General Counsel in the U.S. Environmental Protection Agency and thereafter as an associate chief counsel for the President’s Commission on the Accident at Three Mile Island.

Conflicts Law Expert

Ralph Whitten retired from the School of Law in May 2015, having devoted 38 years as a teacher, scholar, author and endowed chairholder.

Whitten has written many influential law review articles while at Creighton and co-authored one of the leading texts for civil procedure, a required course in all U.S. law schools. He also co-authored one of the leading casebooks in the field of conflicts law.

Both texts, accompanied by extensive teachers’ manuals, have been adopted for classroom use at many law schools and have enhanced the reputation of Creighton University among law educators nationwide.

Whitten was named “Outstanding Professor” by third-year law students in 1983 and is a member of many professional organizations, including the American Law Institute and the National Association of Scholars.

Mary Touhey, BSW’81, JD’88, a former student of Whitten’s, says the School of Law is losing an icon.

“Professor Whitten is in a class of his own as an educator, scholar and writer. He is demanding, razor sharp and a little intimidating. But, oddly, he does it with such wit and humor that students somehow bond to him and fondly remember him long after they have forgotten what he taught them in federal procedure classes,” says Touhey.

Whitten, the first holder of the Sen. Allen A. Sekt Endowed Chair in Law, served as an influential advisor to the courts and federal panels. He has authored and co-authored numerous books, essays and articles in scholarly journals.

Prior to joining Creighton University, Whitten was a law clerk to the late Hon. James Braxton Craven of the U.S. Court of Appeals for the Fourth Circuit from 1969 to 1970; a teaching fellow at Harvard Law School from 1970 to 1972; and a professor at the University of South Carolina School of Law from 1972 to 1977.

ERIC PEARSON

- Associate Dean, Professor of Law
- Joined Creighton law school faculty in 1980
- 35 years at Creighton

RALPH WHITTEN

- Professor of Law
- Joined Creighton law school faculty in 1977
- 38 years at Creighton
“I knew that I would have to be hired for my mind because of my physical limitations,” said Hofer, who will graduate from the Creighton University School of Law in December. “But I also knew I wanted to help people. I thought that law was the best way to do that.”

In a wheelchair and reliant on assistants to help convey some of her speech, Hofer graduated summa cum laude in business administration from Grace University in Omaha in 2013, also serving as an officer in the school’s student government. A week after completing her undergraduate degree, Hofer entered the School of Law’s Accelerated Juris Doctor (AJD) program, a year-round curriculum graduating students in two years instead of the customary three.

As far back as her freshman year at Grace, Hofer had been corresponding with Creighton law school administrators, letting them know she was interested in attending the school and embarking upon a legal education and career.

“I didn’t even know if it was an option,” she said. “But they told me that I could definitely achieve a law degree and they helped me all the way through the process.”

Not only was attending Creighton an option for Hofer, but the law school also offered her the Frances M. Ryan Diversity Endowed Scholarship and the Don Scott Greene Endowed Scholarship to cover the full cost of her tuition. The day her acceptance letter arrived in the mail, she said, both she and her parents were overcome with emotion.

Still, Hofer wondered what that first year, with its attendant
challenges in nearly round-the-clock studying and the Socratic classroom, would look like.

Rising early every morning, studying late into the night, keenly navigating the classroom discussion, Hofer quickly distinguished herself and now ranks in the top 15 percent of her graduating class. She’s no longer in Creighton’s AJD program — she earned a coveted clerkship with Union Pacific last summer and decided to forgo the summer sessions — but she’s still on track to complete her law degree in December. She has received an offer to work as an associate attorney at Lamson, Dugan & Murray in Omaha upon passing the February bar exam.

“She’s been an inspiration to many of our students and faculty,” said Craig Dallon, one of Hofer’s first-year law professors and, as an associate dean when she was exploring the admissions process, an early and vocal champion of her efforts. “I ask myself, ‘Could I have done that?’ I think it’s a reaffirmation every time we see Janae and see her succeeding: ‘Look at what Janae has accomplished with all the challenges she’s faced.’ It gives you strength to do what you have to do too. I admire her.”

Hofer said she likes the idea of inspiring others around her and she also wants to give back in other ways too.

In her clerkship at Union Pacific, she said she’s been exposed to several different areas of the law. The assignments she loves the most are the ones where she can find some tangible, realizable good in helping other people, knowing what help she’s received in her lifetime.

“I want to help people,” she said. “That’s what motivates me. I don’t want my life to be about me. I want it to be about others and pointing them to God. Law school has been harder than I ever imagined, but I would not even be here in the first place if not for the grace of God. I owe so much to Creighton and to so many people who have encouraged me, and I feel it’s only right that I make every effort to give back.”

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**Werner Institute Offers New Concentration in College Student Affairs**

The Werner Institute is offering a new concentration in college student affairs as part of its Master of Science in Negotiation and Conflict Resolution degree program.

Bryan Hanson, assistant director and assistant professor in the Werner Institute, and Wayne Young Jr., Ph.D., associate vice provost for Student Life, developed the track to accommodate students who are seeking such an experience.

The concentration will help students develop a deep understanding of the dynamics of conflict, cultural considerations when engaging in conflict and human development.

Joseph Ecklund, Ph.D., director of Academic Success within the Creighton EDGE, says that the program is one of the few opportunities in Creighton’s academic offerings for students to examine the history, culture and philosophy behind the profession of student services.

Ecklund says the overall goal of the program is to create a greater understanding of what makes today’s college students tick, and recognize the important role “student service” entities play in the care and development of students.

“One of the most unique aspects of the program is the experiential learning assignment,” says Ecklund. “Students are released from 11 hours of class time throughout the semester to spend those hours on a campus other than Creighton exploring student affairs programs.”

The program is primarily designed for graduate students enrolled in the Negotiation and Dispute Resolution program and for graduate assistants employed in any student life departments, but Ecklund says he would like to see more individuals enroll who are not required to as part of their academic program.

The first students in the program graduated in the spring.
Accelerated Juris Doctor Offers Students Options

For a little more than a century, legal education in the United States has meant a three-year course of study, typically corresponding to the traditional fall and spring semester rotations of a university.

But as law progressively becomes a second career for many, more law students are seeking a quicker route through school and into the legal profession. In May, Creighton University School of Law graduated its first class from the Accelerated Juris Doctor (AJD) curriculum — one of just 16 such programs in the nation giving students the option to complete a law degree in two years, attending classes year-round.

“It’s been a great program for motivated students,” says David Weber, professor of law and associate dean for academic affairs. “We’d seen the trends among our own students asking if it would be possible to move a little faster. To differentiate ourselves, we decided we’d implement this and it’s gone very well.”

Students on the AJD track begin with required first-year courses in the summer, taking four classes totaling 11.5 credit hours. In the fall semester, they continue with five required courses and one elective course for 16.5 credit hours. Another slate of five required courses and one elective follows in the spring for 16 credit hours. In the second year, students take 13 hours in the summer and another 16 hours in both the fall and spring semesters, rounding out required courses and electives.

Creighton School of Law offers one of just 16 Accelerated Juris Doctor programs in the nation giving students the option to complete a law degree in just two years.

For Nick Remkes, the program’s chief appeal was the ability to complete the degree one year ahead of schedule and hit the job market that much sooner.

“I’m 33, married, two kids, I want to get back out into the workforce,” says Remkes, who came to Creighton from Ogden, Utah, where he was a police officer. “I applied here, got in, came to Omaha and I’m very glad I did it.”

Remkes says he doesn’t think the program is any more difficult than a traditional law school experience, the key measure of contrast being the management and use of time.

Still, AJD students aren’t harried recluses cloistered in the law library. Allison Heimes, another second-year AJD student, says a crucial aspect of the program is getting involved and staying in touch with professors and fellow students.

“If you want to come in and get the J.D. done as quickly as possible, you know what you have to do,” says Heimes, who is also in the law school’s GOAL program, earning both a J.D. and a master’s degree in government organization and leadership. “But if you’re going to do this, you need to be motivated to do other things too. You need to get some work experience and find some activities that open you up to different opportunities.”

Though taking classes in the summer effectively seals off an opportunity for a clerkship — work experiences at law firms, in government or in corporations — both Heimes and Remkes have found ways to gain work experience through externships: Remkes in the Pottawattamie County Attorney’s Office and Heimes for the Omaha city prosecutor.

The AJD program is also flexible enough to accommodate students who start on the fast track and then decide they want to pull back on the throttle just a little.

Megan Huerter spent one year in the AJD program when a clerkship at First National Bank of Omaha opened. She decided it was a chance she couldn’t pass up.

“One of the main things that drew me to the AJD program was the knowledge that if I wanted to step off at any time, the option was there,” says Huerter, who will still graduate law school in two-and-a-half years. “It’s been a win-win. I’m glad I had the experience of the first year, and I’m glad that it still affords me the opportunity to take the clerkship.”

The malleable nature of the program has meant AJD students have taken a greater hand in helping develop their own educations and also those of future students. They’ve also been mentored by the first group of AJD students who graduated in May and are now mentoring Creighton’s third group of students progressing through the program.

“The doors to the administration and the faculty have always been open to us for suggestions and ideas,” Heimes says. “I’ve enjoyed every aspect of the program. It’s been a great experience.”
Gen. Anthony Zinni, a former commander-in-chief of the U.S. Central Command, is currently enrolled in the last two courses of his practicum in the Werner Institute, working on what will be his third master’s degree.

A retired U.S. Marine Corps general who served in the military for more than three decades, Zinni says that the content and material of the Werner program have been superb and it has opened his eyes to the many levels where skills in negotiation can be applied.

“I like the broad understanding of it all. From legal, to domestic and relationship issues, everyone brings their own personal experiences to the program,” says Zinni. “But it also has tapped into my personal experiences on international peace and those skills were brought out in the courses.”

Zinni holds a bachelor’s degree in economics and a Master of Arts degree in international relations and another in management and supervision. He has attended numerous military schools, including the U.S. Army John F. Kennedy Special Warfare Center and School in North Carolina.

Zinni’s military career began in 1961 when he joined the Marine Corps’ Platoon Leader Class program and was commissioned an infantry second lieutenant in 1965. He has held many command and staff assignments since, and his service has taken him to more than 70 countries, including deployments to Korea, Northern Europe, the Western Pacific, the Caribbean and the Mediterranean.

He has participated in presidential diplomatic missions in locations such as Somalia, Ethiopia and Pakistan and has worked in mediation and negotiation efforts, including those with the U.S. Institute of Peace. In 2002, he was selected to be a special envoy for the United States to Israel and the Palestinian Authority.

Zinni has served with the University of California’s Institute on Global Conflict and Cooperation and with the Henry Dunant Centre for Humanitarian Dialogue in Geneva, a Swiss-based private diplomacy organization founded on the principles of humanity, impartiality and independence. Since 2014, he has served as chair of the board of the Middle East Institute, the oldest Washington-based institution dedicated solely to the study of the Middle East.

Zinni is also a distinguished advisor at the Center for Strategic and International Studies, a nonprofit organization headquartered in Washington, D.C. The center is dedicated to finding ways to sustain American prominence and prosperity as a force for good in the world.

Zinni has served as an honorary board member of Wine Country Marines, a California-based nonprofit organization dedicated to helping service members and veterans. He has been honored with 23 military awards, including the Purple Heart, and also holds 37 unit, service and campaign awards and several civilian awards and honors.

The author of best-selling books on his military career, including Battle Ready, which he wrote with American novelist and historian Tom Clancy, Zinni holds numerous academic positions at Duke University; the Virginia Military Institute; the University of California, Berkeley; the Joint Forces Staff College; and the College of William and Mary.

Zinni plans to continue to work with nongovernmental organizations (NGOs) in Europe.

Report Raises Awareness for Central American Asylum Seekers

In recognition of World Refugee Day on June 20, Jesuit Refugee Service/USA (JRS/USA) and 13 U.S.-based Jesuit law schools, including Creighton’s School of Law, announced the release of “A Fair Chance for Due Process: Challenges in Legal Protection for Central American Asylum Seekers and Other Vulnerable Migrants.” The report captures efforts by Jesuit law schools to assist asylum seekers and migrants from Central America and challenges they face in delivering these services.

For a copy of the report, visit creighton.edu/asylum-report.
The Patient Protection and Affordable Care Act of 2010 ("ACA") is a landmark law dedicated to achieving widespread, affordable health care. In the five years since its passage, the ACA has faced two near-death experiences. The first was the 2012 Supreme Court case of National Federation of Independent Businesses [NFIB] v. Sebelius. The second came just three years later, in 2015, with the Supreme Court case King v. Burwell. In both cases, Chief Justice John Roberts was the ACA’s unlikely rescuer, drafting both majority opinions.

In NFIB, Roberts was joined by the court’s four liberal justices in finding that the individual mandate — the requirement that individuals purchase insurance coverage if it is affordable — is constitutional as a tax. In King v. Burwell, Roberts dealt with a challenge over the statutory interpretation of two lines in the ACA that authorize federal tax credits (referred to by many as insurance subsidies) for insurance bought on state-operated health insurance exchanges, without mentioning federally operated state exchanges.

In the majority opinion in King, released on June 25, 2015, Roberts was joined by five other members of the court in ruling that the ACA’s tax subsidies for insurance premiums are available both in states with their own insurance exchanges and those relying on a federal exchange. Joining Roberts were Justices Anthony Kennedy, Ruth Bader Ginsburg, Sonia Sotomayor, Stephen Breyer and Elena Kagan.

This artist rendering shows Michael Carvin, lead attorney for the petitioners, right, speaking before the Supreme Court on March 4, 2015, as the court heard arguments in King v. Burwell. Seated from left are: Justice Sonia Sotomayor, Stephen Breyer, Clarence Thomas, Antonin Scalia, Chief Justice John Roberts, Anthony Kennedy, Ruth Bader Ginsburg, Samuel Alito and Elena Kagan.
The Death Spiral

Why was the *King* case a near-death experience for the ACA? The ACA provides that individuals can purchase competitively priced health insurance on American Health Benefit Exchanges ("exchanges") that may be run by either the states or the federal government. It also authorizes a federal tax credit for low- and middle-income individuals who purchase insurance. But in an apparent glitch in the language of the statute, the ACA appeared to make this tax credit, referred to by many as insurance subsidies, only available through exchanges “established by the state.” The Internal Revenue Service (IRS) issued a regulation stating that the federal tax credit is available to all financially eligible Americans, regardless of whether they purchase insurance on a state-run or federally facilitated exchange.

When the ACA was passed in 2010, many expected that each state would want to run its own health insurance market exchange. However, many states opted to allow the federal system, *HealthCare.gov*, to do the work for them. Currently, between the state and federal exchanges, more than 10 million people buy insurance through exchanges. An estimated 87 percent of people receiving subsidies for insurance are those who purchased through federal exchanges.

In the days leading up to the *King v. Burwell* decision, many experts predicted that the court would find that ACA only authorized federal tax credits for insurance bought on state-operated health insurance exchanges. This would have meant that “virtually all” individuals receiving subsidized insurance on federal exchanges would lose those subsidies.

Removing subsidies would have made insurance unaffordable for many people, leading these people to avoid purchasing insurance unless they were sick. This leads to “adverse selection” — including more of those who are ill in the pool of insured — which, in turn, further drives up the cost of insurance, causing more people who are less ill to drop insurance coverage. Thus, the loss of federal insurance subsidies could mean that a state’s insurance market could be pushed into a “death spiral” of ever-increasing premiums, which in turn would lead fewer individuals to purchase insurance.

The Plaintiff’s Arguments

The plaintiffs in *King* challenged the IRS rule, arguing that the ACA only authorized tax credits for individuals who purchased insurance on state-established exchanges. Among other arguments, the plaintiffs asserted that the purpose of the tax-credit provision was to encourage states to set up their own exchanges, and the penalty for relying on the federal government to do so was withdrawal of those credits and subsidies.

The Court’s Opinion

The Supreme Court in *King* made quick work of the plaintiffs’ argument that Congress meant to withhold subsidies in order to encourage states to adopt their own exchanges. The court emphasized that Congress obviously did not intend such destructive consequences as the “death spiral,” so it must have meant for premium subsidies to be available in all states.

The court found that Congress’s actual intent could be honored by reading the phrase “established by the State” to include federal exchanges operated as a fallback in states without their own exchange.

The court acknowledged that this is not the “most natural” reading of these four words, but emphasized the need to consider the phrase in the context of the ACA’s overall structure...
and purpose, rather than in isolation. “Our duty, after all, is ‘to construe statutes, not isolated provisions.’”

The court explained that ...

[i]f the statutory language is plain, the Court must enforce it according to its terms. But oftentimes the meaning — or ambiguity — of certain words or phrases may only become evident when placed in context. So when deciding whether the language is plain, the Court must read the words in their context and with a view to their place in the overall statutory scheme.

***

Petitioners’ plain-meaning arguments are strong, but the Act’s context and structure compel the conclusion that Section 36B allows tax credits for insurance purchased on any Exchange created under the Act. Those credits are necessary for the Federal Exchanges to function like their State Exchange counterparts, and to avoid the type of calamitous result that Congress plainly meant to avoid.

The court cited an earlier example of the principle of statutory construction that words should be used “in their context and with a view to their place in the overall statutory scheme” as found in the 2000 case of FDA v. Brown and Williamson. In Brown, the court held that the Food, Drug and Cosmetic Act (FDCA) did not grant the Food and Drug Administration the authority to regulate cigarettes as drug delivery devices. While the FDCA provided very broad definitions of “drugs” and “devices,” the court concluded that “considering the [statute] as a whole, it is clear that Congress intended to exclude tobacco products from the FDA’s jurisdiction.” (Congress later amended the FDCA to provide the FDA with this regulatory authority.)

The majority in King did concede that the ACA “contains more than a few examples of in-artful drafting.” Nevertheless, the court’s closing words are strong and definite:

Congress passed the Affordable Care Act to improve health insurance markets, not to destroy them. If at all possible, we must interpret the Act in a way that is consistent with the former, and avoids the latter. [‘Established by the State’] can fairly be read consistent with what we see as Congress’s plan, and that is the reading we adopt.

This conclusion inspired an exasperated dissent from Justice Antonin Scalia, characterizing various points of reasoning as “quite absurd,” “eccentric,” “feeble,” “interpretive jiggery-pokery,” “pure applesauce” and a “dismal failure.”

The Path Not Taken

Many experts predicted that the King decision would be grounded on the legal principle known as “Chevron deference.” Chevron deference is a doctrine that counsels that courts should generally defer to agencies’ reasonable interpretations of statutes if the plain meaning of the statutory language is ambiguous. In its briefs and during oral argument, the government asserted first that the statutory language clearly permitted tax credits for people who purchased insurance through federally established exchanges. But, in the alternative, even if the statute was found to be ambiguous, the government argued that the application of Chevron meant deferring to the IRS’ reasonable interpretation of the statute.

As described above, the majority reached its decision without resorting to the doctrine of Chevron deference at all. Of interest, Chief Justice Roberts explained that it was the task of the court, not the IRS, to interpret the relevant provision of the statute. And in the court’s view, a thorough consideration of not
The Path Ahead

When analyzing an agency’s interpretation of a statute, this Court often applies the two-step framework announced in Chevron, 467 U. S. 837. But Chevron does not provide the appropriate framework here.

The tax credits are one of the Act’s key reforms and whether they are available on Federal Exchanges is a question of deep “economic and political significance”; had Congress wished to assign that question to an agency, it surely would have done so expressly. And it is especially unlikely that Congress would have delegated this decision to the IRS, which has no expertise in crafting health insurance policy of this sort. It is instead the Court’s task to determine the correct reading of Section 36B.

While this “path not taken” may seem of interest only to lawyers, it has far more broad importance. If the court had found the language of the ACA to be ambiguous and then opted to defer to the IRS’ interpretation under Chevron, a subsequent presidential administration (perhaps a Republican one) could have been placed in the position of reinterpreting the statute through the passage of a new regulation that precluded the availability of subsidies for insurance purchased on federal exchanges. Thus, the choice of the majority to avoid the Chevron pathway to finding for the government translates the King decision into some measure of long-term stability when it comes to tax credits and subsidies.

The Path Ahead

Will the King decision mean the end of state-run exchanges? Some are predicting that there might be a bit of “buyer’s remorse” in state capitals around the country. On one hand, state exchanges provide the opportunity for state insurance regulators to oversee their markets, a long-familiar role. In addition, state-run exchange systems allow for a greater amount of policy flexibility and control.

On the other hand, states may have underestimated the difficulty and expense of building from scratch, and running, state marketplaces with all of the technical complexity of a multifaceted website, customer service demands that mean maintaining call centers and marketing efforts to encourage the uninsured to sign up. Nearly one-half of the states are running into money difficulties while federal start-up funds are now at an end. The future may see more states turning their marketplaces over to HealthCare.gov.

Other big changes the future may bring may depend on the next presidential election. All of the frenzied thinking that went into how to respond if the King decision had turned out differently could foreshadow future legislation, including the possibility of turning health care insurance over to the states to adopt alternative approaches, or provisions that could water down parts of the ACA such as the sections that cover employers.

Closing Thoughts

Chief Justice Robert’s discussion of the “death spiral” contains perhaps one of the favorite lines of the opinion for many of my health law colleagues: “It is implausible that Congress meant the Act to operate in this manner.” The chief justice’s support for this proposition? A quote from NFIB: “Without federal subsidies ... the exchanges would not operate as Congress intended and may not operate at all.”

The irony? The quote did come from NFIB — but from the joint dissent.

One lesson of King for everyone? Words matter — and may come back to haunt you.

About the author: Katharine Van Tassel recently joined Creighton School of Law as professor and director of Health Law Programs. She began her teaching career in 1997 and has taught health law, law and science and bioethics courses. She is editor of the Health Law Prof Blog, and a regular blogger on Bill of Health (a blog of the Harvard School of Law) and Bio Law: Law and the Life Sciences.

She currently serves as chair of the executive board of the Law and Mental Disability Section of the American Association of Law Schools and as co-chair of the Food and Drug Law Committee of the Administrative Law Section of the American Bar Association. She also has served on the executive board of the Law, Medicine and Healthcare Section of the American Association of Law Schools.

Van Tassel’s scholarship has appeared in such journals as the University of Chicago Legal Forum, the Pepperdine Law Review, the Cardozo Law Review, the Connecticut Law Review, the Brooklyn Law Review, the University of Cincinnati Law Review and the Seton Hall Law Review.

Her work has been cited by the Nevada Supreme Court, the New Mexico Supreme Court and the New Jersey Tax Court, all on issues of first impression. She is the author of International Encyclopaedia of Laws: Medical Law, United States of America (Kluwer, forthcoming, 2016). She is the co-author of the two-volume encyclopedia Food and Drug Administration (4th ed., 2015), which is cited as an authoritative FDA source by the U.S. Supreme Court and numerous circuit and district courts. She is also the co-author on the book Litigating the Nursing Home Case (2nd ed., 2014).

Recently, Van Tassel testified as an expert witness before the U.S. Commission on Civil Rights in Washington, D.C., on how to improve the enforcement of the Emergency Medical Treatment and Labor Act (EMTALA) (Washington, D.C., March 2014).
In 2011, Cardinal Jaime Lucas Ortega y Alamino, cardinal-archbishop of Havana, traveled to Creighton University to receive his honorary doctorate from then President John Schlegel, S.J.

As the narrator of his citation, I was honored to meet this man from a country I had become so familiar with, but had never set foot in. I am part of a generation that was taught Cuba’s critical place in American history, but part of my professional life has been dedicated to helping bringing Cuba out of the 1950s into the 21st century.
On that day, I recall Cardinal Ortega wore an effortless smile and exuded an inner peace — both of which belied the daily struggle of a country still led by the atheistic communist Castro brothers. When asked about his steadfast positive outlook given the difficult task he was charged with, he explained that in Cuba especially, one must take the long view. By doing that, together with strengthening your devotion, you and your flock are assured of coming to a better place in the end.

Faith in a better life is what Cubans long for, whether they leave the island in search of it or remain to wait for it to arrive. And although Americans don’t typically take the long view, we share Cardinal Ortega’s belief in a better future. It is what drove us to break from British rule 240 years ago, and it’s what drives us as individual citizens to expand our horizons within this free-market democracy. It was also one of the factors that led Creighton to secure a federal grant from the United States Agency for International Development (USAID) in 2005 to study and report on resolving property claims issues in Cuba dating back to the 1959 revolution.

“Making life better for people on the island” was the mission-focused approach that our team would measure against to ensure that we were moving in the right direction. As principal investigator for the grant, professor Patrick Borchers, then dean of the Creighton law school, articulated this charge to me, Creighton political science professors Richard Witmer, Ph.D., and Erika Moreno, Ph.D., and the rest of the team — a collection of six faculty and six students drawn from the law school and the political science department. This approach was our guiding premise in our research, our investigations, our system design for dispute resolution and our final report.

While the linkage between resolving decades old property claims and making life better for people living under a planned economy that fails to deliver even the most basic means of existence seems tenuous, in the unique case of Cuba and the United States, it is not. The collapse of communist regimes and transition to open economies across the world in the 1990s demonstrated that ordinary people fare better in open economies where entrepreneurial spirit can thrive. In Cuba, the economy cannot fully flower until, first, the regime either changes or embraces an open system and, second, the U.S. embargo is lifted — leading to foreign investment. Under current U.S. law, the embargo cannot be lifted until a series of things takes place — first on the list: resolution of outstanding U.S. property claims.

Resolution of these claims is the first domino that must fall in the long march toward lifting the embargo. That Creighton was tasked by Washington to design that domino was a great honor, one that we embraced. The dispute resolution systems we designed both for American claimants and Cuban-American claimants were grounded in sound policy, international law and a sense of equitable flexibility. Inducing the rapid settlement of property claims as a step toward lifting the embargo and thereby opening up Cuba for the betterment of everyone was the goal.

Our relationship with Cuba has largely remained frozen since 1962 — politically, economically and legally. Today, our relationship with Cuba is changing rapidly through new diplomatic ties, financial and banking arrangements and increased travel. We can review three areas — politics, economics and law — to chart some interesting new movements and their attendant ripple effects.

Politics

When President Barack Obama announced in December 2014 that the United States would restore diplomatic relations with Cuba and that a preliminary agreement had been reached to do so, brokered in part by Pope Francis, he was quick to note that it was up to Congress to deal with the embargo. As president, he possesses superior constitutional authority over foreign affairs, but even he cannot override a statute — the legislative vehicle in which the embargo is embedded.

While the president’s announcement came as a surprise to many, much of the groundwork was laid out in a logical way — though not without its share of political twists. According to polls, 60 percent of Americans favor lifting the embargo. Shortly after the announcement, the private rift between Republican senators over the Cuba embargo became quite public. Leading the Wall Street wing that would like to see open investment opportunities, Sen. Jeff Flake, R-Ariz., came out strongly in favor of lifting the embargo, and Sen. Marco Rubio, R-Fla., leading the anti-Castro wing, came out strongly against doing so.

A similar rift among candidates for the 2016 Republican presidential nomination is also likely to open up as a result. No presidential candidate since Dwight D. Eisenhower has won the Republican nomination without the Florida electoral vote. And to win Florida and secure that nomination, a candidate must carry the Cuban-American vote centered in and around Miami. Even though polling shows that Floridians in general track the sentiment of the rest of the American population about opening up relations with Cuba, and the younger generation of Cuban-Americans agree, the overwhelming majority of Cuban-American Republicans, whose primary vote is highly influential in Florida, think otherwise. Seventy percent don’t want the embargo lifted and 78 percent are against normalizing relations with Cuba.

This especially puts former Florida Gov. Jeb Bush in a tight spot. Clearly, he must carry Florida, as his home state. And he is on record as governor, and more recently, as supporting the embargo against Cuba. But to win the presidency in the general election, Republican candidates historically must also bring the broader business community and rural America into their fold. In this case, not only does Wall Street want the embargo lifted in order to do business in Cuba, but “big agriculture” wants it lifted as well.

Within six days of President Obama’s announcement
normalization of relations with Cuba, a new lobbying group was launched on Capitol Hill representing 25 U.S. food and agriculture companies and associations seeking to end the embargo and start doing business with Cuba. Led by Cargill, the U.S. Agriculture Coalition for Cuba (USACC) knows Cubans are hungry and wants to feed them; they also know that the Cuban agriculture sector is immature and underdeveloped — which represents a tremendous opportunity very close to home.

Consequently, saying what he needs to say to capture Florida and secure the Republican nomination, yet not alienating his natural business and rural constituencies, will be Gov. Bush’s delicate task. It’s one which his Democratic opponent (and potentially some Republican primary opponents) may seek to exploit. But the Democratic nominee will have potential embargo-related issues to contend with as well.

The interest of big American agriculture concerns in Cuba has environmental groups worried about quick, unregulated development on the island that could devastate ecosystems there. One key side effect of the embargo has been not only to preserve Cuba’s famous 1950s American automobiles still negotiating the streets of Havana, but also to preserve Cuba’s environment. As the New York Times recently noted:

*The country is in desperate need of the economic benefits that a lifting of the embargo would almost certainly bring. But the ban, combined with Cuba’s brand of controlled socialism, has also limited development and tourism that in other countries, including many of Cuba’s Caribbean neighbors, have eroded beaches, destroyed forests, polluted rivers, damaged coral reefs and wreaked other forms of environmental havoc.*

Any modern photo of Havana harbor is noteworthy for what’s not in the picture — boats. If Cubans have access to boats, they tend to try to leave the island. But in a new economic environment, not only will they tend to stay and take advantage of developing opportunities, Havana’s harbor will suddenly be filled with cargo vessels, tourist boats and large Caribbean cruise ships. The danger to Cuba’s famously pristine coral reefs from increased shipping activity is clear. But so too is the danger to habitats on the island that would be cleared for increased agricultural, logging and industrial activity.

Of the more than 350 bird species present in Cuba, one quarter are found nowhere else on earth. Moreover, Cuba is the main stopover for literally millions of migratory birds that might lose this sanctuary to development as they transit from North to South America. Many other plants and animals endemic to the island could also be threatened with development.

Just as the business community is a natural constituent for Republican presidential candidates, the environmental community is even more so for Democratic presidential candidates. If that community coalesces around a policy of keeping the embargo intact in order to keep development at bay until sufficient environmental controls are in place, that puts the Democratic presidential nominee in the awkward spot of backing President Obama’s opening to Cuba while assuaging the reticence of environmentalists. Secondarily, the organized labor community, another natural Democratic constituent, can be expected to have something to say about cheap labor and lax working standards in Cuba drawing away American jobs and making certain U.S. labor-intensive industries even more uncompetitive once the embargo is lifted.

**Economics**

The World Bank ranks Cuba’s economy based on gross domestic product 66th in the world (four spots behind Puerto Rico), although this assessment could be far worse, as the Castro regime is believed to have favorably altered the books on its reporting.

Both politically and economically, Cuba was a satellite state of the Soviet Union during the Cold War. This was not happenstance. Fidel Castro traveled to Washington, D.C., after the revolution brought him to power in 1959, seeking an audience with President Eisenhower. However, Ike refused to see him. Afterwards, he went to Moscow, where Premier Khrushchev was all too happy to embrace him and forge the long Havana-Moscow alliance that bedeviled the United States for so many years.

After the collapse of the U.S.S.R. in 1991, Castro turned to China for financial support, which got Cuba through most of that decade, albeit with a GDP that contracted by 35 percent — a time of austerity the Castros’ referred to as the “special period.” But it was the pivotal election of Hugo Chavez to the presidency of Venezuela in 1999 that proved to be the largest economic boon for Cuba following the demise of the Soviet Union.

Political soul mates, Castro and Chavez quickly struck an anti-U.S. alliance whereby Cuba would receive about two-thirds of its
oil needs from Venezuela in exchange for providing Venezuela with much needed health care expertise via Cuban doctors and medical specialists. This arrangement was expensive for Venezuela, which was effectively absorbing 45 percent of Cuba’s trade deficit, but one which Chavez could afford with high oil prices. However, the death of Chavez and the plunge in oil prices have jeopardized that quid pro quo.

When oil was trading at $145 a barrel, Venezuela could shoulder this imbalance. As recently as 2012, the Cuba-Venezuela “bilateral trade in goods and services amounted to 20.8 percent of Cuba’s GDP in 2012 yet only 4 percent of Venezuela’s GDP,” according to a 2014 Brookings Institution policy brief. But with oil now around $50 a barrel, Fidel Castro on the sidelines and a new president in Caracas, many wonder whether the fraying of this economic axis that kept the Cuban economy going was one of the key factors influencing Raul Castro’s acceptance of President Obama’s diplomatic initiative to open Cuba.

If direct investment by the American private sector became a reality in Cuba, life on the island would change dramatically — and not just in urban Havana. Cuba’s main export goods include sugar, nickel, tobacco, citrus and coffee. All these commodities are located in “the campo,” which would undergo a tremendous modernization with American technical expertise and development. In short, the entire island would benefit. But current U.S. law is an impediment.

**Law**

The U.S. embargo against Cuba, now well into its fifth decade, is actually contained within a half dozen federal statutes that have, in various forms, re-articulated and refined it — most famously via the 1996 Helms-Burton Act. Only a subsequent act of Congress or judicial review by the U.S. Supreme Court can overturn a federal statute; consequently, the battle over the embargo will ultimately be waged in the halls of Congress under this president or the next.

What President Obama can do in the interim is settle the property claims issue with respect to American property seized in 1959 during the Castro-led revolution. The Supreme Court has repeatedly recognized a president’s power to conclude property settlement agreements with foreign nations via executive agreement. An executive agreement is an internationally legally binding commitment — very much like a treaty. But for domestic legal purposes, it is not a treaty because it is not a document that is submitted to the Senate for approval. Nevertheless, it has what the court calls “similar dignity” as federal law and, as such, must be followed.

President Roosevelt settled property claims issues dating from the Czarist era with the Soviet Union in 1933 under the Litvinov Assignment, and President Carter created a property claims settlement system in the Algiers Accords that established an international arbitral tribunal in The Hague to sort out U.S. claims against Iran for American property nationalized by Iran during the revolution. Similarly, President Obama could conclude an executive agreement with President Castro to resolve outstanding U.S. property claims that were, in fact, one of the main bases for imposing the embargo in the first place.

To do so would not only remove a key rationale for the embargo, but would also begin to comply with the statutory requirements that must be met before the embargo can be lifted. There are two obvious ways this can be achieved. The easiest method, but also politically trickiest, would be for the U.S. to back a loan to Cuba from the World Bank, the International Monetary Fund or the Inter-American Development Bank to pay for most of the debt owed on the property that was confiscated — the value of which with interest is now above $7 billion. The U.S. is the largest shareholder in all three international financial institutions, but Cuba would need to join. With U.S. backing, that of course could happen.

The second method would be for the president to utilize the property claims settlement mechanism envisioned by the Creighton team in its 2007 report to USAID. Like the U.S.-Iran Claims Tribunal created by the Algiers Accords, the tribunal for this system would resolve the property claims of U.S. nationals against the Cuban government, but it would do so in a flexible way that would allow for the largest claimants, mostly corporations, to seek joint ventures and other forms of compensation in exchange for settlement of their claims — thereby sparking certain sectors of the Cuban economy.

The president’s executive agreement could also extract a promise by the Cuban government to settle claims by Cuban-Americans, who were of Cuban nationality at the time their property was confiscated, within a special chamber of the Cuban judicial system (perhaps established in Puerto Rico or Florida) in order to clean that slate as well — although international law does not require Havana to do so. Settling the Cuban-American claims would be a smart move on Castro’s part in that this would be the natural constituency to immediately invest in a resurgent Cuban economy with their established family connections and understanding of Cuban culture.

Either way, the lives of the people in Cuba would be remarkably improved. If this is the ultimate aim kept in mind by policymakers in Washington as they decide how to move forward with Cuba, as it was with our group when we undertook our Cuba project, then the outcome will surely be one that will cause Cardinal Ortega to smile even more broadly. The long view will indeed have been validated.

**About the author:** Michael Kelly is professor of law and associate dean for faculty research, graduate and international programs. He was co-author of the Report on Outstanding Property Claims Between Cuba and the United States (Creighton University Press 2007) for USAID and testified in 2011 before the House Ways and Means Committee in Congress about property claims issues with Cuba and the embargo. Since the opening of diplomatic relations between Cuba and the United States, Kelly’s commentary on Cuba has appeared in the Wall Street Journal, New York Times, Boston Globe, Associated Press and Bloomberg News. He continues to work on this issue together with property claims of former Cuban nationals now living in Spain.
E-Lawyering

By Adam Klinker

Technology offers new opportunities for attorneys to meet clients’ needs, says e-lawyering award winner and Creighton alumna Mary Vandenack

Working late into the night a decade or so ago, Mary Vandenack had a revelation.

The lawyer and 1992 Creighton School of Law graduate was doing some work for a client and stopped for a moment to review her personal banking options as the clock edged toward midnight.

“I was paying bills, transferring money, checking my balance and I thought, ‘Shouldn’t our clients be able to access everything of theirs, 24 hours a day?’” Vandenack said. “I thought, ‘How many times do I get a call asking for a corporation or LLC minute book or some other formal business records?’ Couldn’t we put that in a secure place online that a client could get to, any time they needed it?”
With the creation of an electronic document library for clients and an online repository for templates for various legal forms, Vandenack and Williams took one of the Omaha area’s first and boldest steps into the arena of e-lawyering. Their firm, Houghton Vandenack Williams, has gone paperless and provided a level of privacy and confidence informed by some of the cutting-edge best practices in cybersecurity.

On behalf of her firm in April, Vandenack accepted the 2015 James I. Keane Memorial Award for Excellence in eLawyering at the American Bar Association (ABA) TECHSHOW Conference and Expo in Chicago. Vandenack herself was also nominated for the College of Law Practice Management InnovAction Award for her contributions to e-lawyering, and she sits on the ABA’s Futures Commission, a body convened by ABA presidents to study how legal services are delivered and what the future of legal work should look like. She also has been asked to serve in a leadership role for the ABA’s Law Practice Division Futures Initiative.

Mary Vandenack, JD’92, left, and Mark Williams, JD’98 ... Their firm, Houghton, Vandenack and Williams, received the 2015 James I. Keane Memorial Award for Excellence in eLawyering from the American Bar Association.

The short answer was yes. But, as Vandenack discovered and as is the case in most questions of the law and the application of technology, there were plenty of caveats and qualifications.

“What seemed like such a simple idea took a lot of work to get done,” Vandenack said. “There are security and secrecy issues, server specifications, a whole new realm of legal conversations that were had. But today, we have clients who come to us because there is an ease of access to what they need and a level of trust that their documents are still safe and secure and that there’s always a lawyer ready to counsel them on any questions that arise.”

Vandenack partnered with another Creighton law grad, Mark Williams, JD’98, to start a new firm, the operational basis of which would be exploring the realms where technology could not only save time and money, but use clients’ legal budgets for more than just the routine minutiae that can so easily chip away at dollars, minutes and patience.

Williams, who began his career as a self-employed information technology specialist, said his transition into law was fostered by those days on the IT circuit, introducing small business owners to the world of the computer and the ways that electronic box on the desk could simplify life.

“The thing I always knew I wanted to do, from my very first day in the IT world, was open up what a computer could do for a client or a business owner,” Williams said. “I wanted to help them make money, save money, simplify their working lives. When I came over into the legal world, I was able to do some of those same things. It’s been incredible what technology has allowed us to do.”
In August, Vandenack took part in the commission’s presentation to the ABA House of Delegates. And at the ABA’s Law Practice meeting this spring, she sat on a panel discussing the impact of online legal services and the rise of nonlawyer practitioners and nonlawyer ownership of law firms and what issues these phenomena are creating for traditional law practice.

Houghton Vandenack Williams is also in the midst of an IT upgrade that Williams said will provide yet another e-lawyering advantage for the firm’s attorneys: the ability to do legal work in real time, securely, from anywhere.

“In the old days, if I wanted to work from home, I had to take the file home, which could be a nightmare in itself,” Williams said. “If you needed anything else at the office or something off your office computer, you couldn’t get that, so you were stuck there. There was a chance you could spend several hours and still not get accomplished what you needed. But with the technology you see today, there’s no difference in working from home versus working on your laptop or desktop at the office. It’s in real time, it’s secure — it’s efficiency and quality of service.”

Today, recognizing the proliferation of such online legal services websites as legalzoom.com and Rocket Lawyer, more brick-and-mortar law firms are making similar forays into e-lawyering, recognizing their profession as a whole — synonymous with the billable hour, the mahogany library stuffed with leather-bound court proceedings and the conference table — may need a digital upgrade.

“It takes a certain amount of courage,” said Paul McGreal, dean of the Creighton School of Law and himself a commentator and adopter of e-lawyering strategy. “But I believe this type of thinking about legal practice is deeply connected to the Jesuit mission of meeting people where they are. This is cutting edge in more ways than one. Research by the ABA has shown there’s more than enough legal work to go around, as the ABA has shown that many people in our country have unmet legal needs, and e-lawyering is an effort to meet those clients where they are. It’s asking, ‘What are your needs now and how can I adapt to serve you?’”

While technology has evolved to incorporate legal filings in the cloud, e-lawyering doesn’t always have to be the latest and greatest. Sometimes, as both Vandenack and McGreal said, the simple use of email or cell phone text message falls into the purview of e-lawyering and goes great lengths toward simplifying attorney-client communication.

“(E-lawyering) is a pretty broad term,” Vandenack said. “You start at the bottom with simple electronic communications. Email is the original e-lawyering. It was something that simplified how we talk to a client. Now, we have different ways of sharing files with clients. We have ways clients can begin the process of creating something like a will or a trust. It all depends on what kind of practice you’re in.”

New technologies have also started new conversations about ethics and security in the legal profession. Websites such as legalzoom.com often provide potential online clients with documents and filings they need, but without further help from an attorney. Vandenack said the services her firm offers are always backed up by the availability of a lawyer.

“We go beyond those basics,” she said. “It’s not just: Here’s a template, figure it out. Ultimately, the question centers on lawyers controlling the direction of their own profession.”

Some states are allowing more people who are not lawyers to have a greater hand in their own legal filings. Online legal services advertise their simplicity and cost-savings, too.

But Williams said he has seen at least a small bump in business when clients try to go it alone or turn to a website.

“I still get a lot of calls from people who get started on legalzoom.com, and they’ll come to me with questions because they got stuck,” he said. “There’s still the potential for error there, and that’s why we still emphasize that there is a lawyer behind this, someone who is just a phone call or an email away.”

The availability of an actual, human lawyer on the other side of a website or a file-sharing service is a crucial point in the legal ethics of e-lawyering, McGreal said.

The current push in e-lawyering, he said, centers on the unbundling of legal services, leaving some facets of a filing or other matter to the client themselves.

“But a lawyer does have to make it crystal clear that anything a client does beyond that limited scope of legal services is truly on their own,” McGreal said. “If the lawyer does not clearly communicate with his or her client, and a client expects the lawyer to do more, a lawyer can be accused of neglecting a client’s legal work. Since these practices are new and evolving, the profession has not worked through all of the ethical and legal implications just yet. We’re getting there, though.”

Williams said in making more of a client’s own documents

The availability of an actual, human lawyer on the other side of a website or a file-sharing service is a crucial point in the legal ethics of e-lawyering.

Paul McGreal | Dean, Creighton School of Law

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available at the press of a button, the most mundane of legal tasks can be accomplished — sometimes up to 95 percent of a run-of-the-mill filing can be left to a client who has done the work before and is familiar with the procedures.

But there’s still that 5 percent, he said, where a lawyer is still around to help.

“We, of course, always make that our priority,” he said. “We want to be as accessible as we can for the client, and our clients know they can always make that phone call or send that email.”

Another ethical front opened up by the e-lawyering world is the sacrosanct attorney-client privilege that has its basis in confidentiality. Recent hackings have laid bare the susceptibility of even the U.S. government’s cybersecurity measures and preparedness.

But as Vandenack and Williams have demonstrated, the security element is largely put to rest based on the variety of tools they use in making files available to clients and by the hyper-vigilance of clients themselves.

“Most people don’t want to attach a tax return or an asset list to an email,” Williams said. “And the concept of encrypted email hasn’t really made its way into the general public just yet. As far as an electronic delivery platform, we’ve found what we do with our online repository has been very helpful. The database management system is built around the client and they can put deadlines on their files — things can be automatically erased in seven days or even an hour — and that’s greatly reducing the risk because it’s in a secure environment and the client has the code. Even if somebody were to intercept it, they’d have no way of reading it.”

As McGreal said, the electronic environment can be at least as safe, if not safer, than the age-old system of putting files under lock and key.

“We should be asking the same question in a different way: ‘Is the client’s information safe?’” McGreal said. “In the physical world, the proverbial lock-and-key file is not 100 percent safe. If someone picks a lock or uses a crowbar, they can access the client’s files. But we nonetheless say that the physical files are ‘safe enough’ if a lawyer takes reasonable precautions.

“We should be asking the same question of cybersecurity — is it safe enough? There’s a staggering needle-in-a-haystack challenge for a hacker to find a specific client’s documents in an online repository such as Dropbox or Box. Just as with the thief with the lock pick and crowbar, will a hacker expend the time and money required to identify and access protected electronic files? An electronic document may not be 100 percent safe, but neither was the way we were doing it before. Should the virtual realm be held to a higher standard? While reasonable minds can differ, I think not, so that we do not discourage innovation that can promote access to justice.”

As in the wider world, the advent of technology in the legal field has meant greater efficiency in a number of realms. Tasks that used to be assigned to whole word processing departments and consume weeks or months of time are now often completed in mere minutes and often at the click of a button or two.

The efficiencies created by technology in swiftly executing the more run-of-the-mill legal work have allowed Vandenack and Williams to serve clients in other, more specialized ways.

“Most of our business clients have only one question for us when they need something done: ‘How much will this cost?’” Vandenack said. “When they’re able to do most of the little things themselves, we can concentrate elsewhere.”

That means anticipating client needs, studying up on the latest codes and rules, finding other areas where a client could save money or hassles. To that end, Vandenack said she sees her firm’s initiatives as an invitation to more attorneys to explore e-lawyering.

“Let’s create a way that all lawyers can e-lawyer,” she said. “It comes down to knowledge management. If I’m sitting in my office working on a Section 1031 form and I run into another attorney who might be having the same issue, let’s create a common place where we can talk about that and share what knowledge we have — a neural network. Let’s create that internally and make it available. That way, we’re not charging clients for research somebody else has already done.”

The idea may seem to imply fewer jobs in the legal field, but Vandenack, Williams and McGreal all said the opposite would be true.

With the need for more specialists in fields now opened up, including in the IT world, there may just be an employment boon for the profession.

“The generation of students now entering law school has grown up as digital natives,” McGreal said. “They are more savvy and experienced with technology. They’re thinking about it in ways we haven’t even dreamed of, and they’re less resistant to change. This generation will see new work for lawyers to be done. For example, in the past, we used technology and forensic data analysis to understand past events, like the Enron collapse. In the future, perhaps lawyers will use big data to find weaknesses in an organization’s systems and processes that will allow them to prevent wrongdoing before it occurs.”

The continuing education of clients, too, is implicit in e-lawyering. Vandenack said. Her firm has also added how-to videos and access to articles, and started a blog on health care and tax law, all available online and on demand.

“Once upon a time, lawyers got paid to give information,” she said. “That’s come and gone. What do we do now? We provide access to information that clients can, in turn, go out and use. It’s that access point we’re trying to enhance. We’re always asking how we can make this better and make it something, hopefully, everyone can use.”

According to Vandenack, the continuing education of clients is implicit in e-lawyering. Her firm has added how-to videos and access to articles, and started a blog on health care and tax law, all available online and on demand.
The law firm, with its paneled walls, meticulous libraries, suited-up legal warriors and briskly professional receptionists, is among America’s most recognizable arenas, made famous in films and novels. It is the place where résumés from law school graduates rain down relentlessly, each of them constituting a prayer in search of a place.

And though that remains largely the case, a wind of change has been blowing through the profession as businesses and corporations tired of paying high fees to private law firms increasingly establish in-house law departments. There, surrounded daily by the people they are serving, growing familiar with the routines and practices of their only clients, lawyers become as much corporate leader as attorney.

Many graduates of the Creighton School of Law have made the leap from private firm to corporate legal department, some of whom now guide the affairs of multi-billion-dollar concerns.
That is good news for law graduates with undergraduate degrees in computer science and engineering, or even biotechnology, medical or pharmaceutical experience, all areas that help keep law firms competitive with in-house departments.

Ed Morse, business law professor at Creighton, said the rise of in-house law departments may be winning attention but that the phenomenon is not new. In fact, the path from private law firm to corporate law department has been well trod, he said, largely because the knowledge required in either environment is much the same.

“If you’re going to be an effective business lawyer, you have to understand how your client’s business works,” he said. “I think that’s true whether you are inside or outside the company.”

Paul McGreal, dean of the Creighton School of Law, agrees. He also can envision some skills that might find a place in a law school curriculum that is interested in the special challenges facing in-house attorneys.

Among them is James Silhasek, BA’69, JD’72, who is now general counsel at Discount Tire, an Arizona-based company that has achieved annual sales in excess of $4 billion. He was formerly a private-firm tax and real estate lawyer who performed so much billable work for Discount Tire that the company hired him full time, in house.

“A lot of companies are starting to take the position that you don’t do anything unless you have an attorney and an accountant involved,” Silhasek said. “Obviously, it’s much more convenient if you have your attorney there at all times. If we were to farm this out to a law firm, God knows what it would cost because real estate acquisitions are so difficult nowadays because of government regulation.”

Whether for convenience, cost or security, the trend toward in-house legal departments appears to be on an upward slope.

A study conducted in 2014 by Laurence Simons International (LSI), a company that specializes in recruiting employees for legal departments worldwide, found an uptick in in-house hiring, not just in the United States but globally. Responses received from 2,500 legal professionals, representing more than 70 countries, showed that 49 percent planned to hire in house, which LSI saw translating into “measured, consistent growth of between one and five percent.”

In a press release, LSI hailed the findings.

“That is fantastic to see after the long, dark days of 2008 to 2010 where percentages were abysmal,” said Danice Kowalczek, Laurence Simons’ managing partner for North America.

The dark days of hiring that followed the onset of the Great Recession in 2007 are remembered too by Irina Fox, assistant professor of business law at Creighton.

The recession, she said, led to mass layoffs and even destruction for some prominent law firms — a traumatic experience that has made private firms more cost conscious. Combined with pressure brought by client companies feeling heat from shareholders, private law firms are adjusting to their new reality, she said, and are responding to the challenge of in-house law departments not just by cutting costs, but also by specializing.

“For instance, within an information technology department, a law firm may now have special subdivisions dealing with semiconductors, software, data privacy and security,” Fox said. “To staff these highly specialized law practices, law firms seek law school graduates educated in these areas or having relevant pre-law experience.”
Recent studies and surveys suggest that women lawyers have a significantly better chance of rising higher in their profession if they join an in-house legal department rather than a traditional law firm.

According to a March article in Corporate Counsel magazine, corporate legal departments have offered more promising opportunities to women for at least 20 years. In part, the magazine found, that is because working in corporate departments was perceived as less prestigious than working for law firms, and such opportunities were therefore more open to women in a profession long dominated by men.

Joan Williams, founding director of the Center for WorkLife Law at the University of California’s Hastings College of the Law, told researchers that in-house departments also proved more hospitable to the desire of women to achieve a balance between work and personal life, for example offering eight-hour work days to women planning to have children.

Arnold Johnson, JD’80, serves today as senior vice president and general counsel at Houston-based Noble Energy, an international oil and gas exploration company with a market capitalization value of about $15 billion.

He said he has noticed a trend toward hiring in-house counsel.

The world is changing, he said, and the speed of business is increasing with it, thus creating a greater need for the fast and responsive legal services that on-site lawyers are best equipped to provide. Add to that the fact that companies like Noble Energy have a global presence, and Johnson said such companies need a 24-hour ability to respond.

All this means that corporations have been reluctant to hire anyone in house who lacks experience, and often long experience, in the intricacies of business-related law.

Silhasek is among those who believe that recent law school graduates should go the traditional law firm route before jumping into corporate waters.

“I would very much discourage any individual from becoming a corporate attorney right out of law school,” he said.

A subtle change takes place when young attorneys leave a private firm to join a corporate department, Silhasek said. At a firm, he said, lawyers are regarded as assets able to attract work and billable hours. In the corporate world, however, they can be seen as an expense and need to rapidly demonstrate their worth.

Even there, though, things might be changing.

Morse said the law-firm-to-corporate-department model, though venerable, is not invulnerable.

Arnold Johnson, JD’80
Senior Vice President & General Counsel
Noble Energy | Houston, Texas

“For example, financial literacy, understanding financial statements and understanding the financial environment within which businesses operate,” he said.

And then there are what McGreal calls “soft skills,” important in business life, that could be incorporated into legal education.

“Learning how to manage people effectively is an important skill, especially as you advance and have people reporting to you,” he said. “You might have to work with other units, or teams, within the business, and being able to manage conflict is very important.”

Women Find More Opportunities as In-House Counsel
“That’s the traditional approach, but I’m also aware of a number of people who have broken that model and started their careers in corporate legal departments,” he said.

“They tend to be larger departments where they can get training and specialized experience and work their way through the organization.”

Practicing on the 15th floor of the Union Pacific building at 14th and Douglas streets in downtown Omaha, Gayla Thal, JD’80, is a rare example of the freshly minted law grad who immediately found a home in the corporate world. She joined UP in 1980 and began an ascent that 35 years later sees her serving as senior vice president for law and general counsel. Union Pacific, one of the largest corporations in the United States with a more than $80 billion market cap, very rarely hires newly graduated lawyers, she said, even less now than it once did.

“We’re not really structured and organized to do the kind of supervision that’s done in law firms with multiple layers of experience in reviewing work,” Thal said. “That is the reason we very often want people to get private firm practice first.”

Students with an eye on corporate practice should seek training in the intricacies of business-related law, she said, should understand the federal government’s Form 10K, which requires an annual, audited statement of a company’s financial health, grasp the essence of a balance sheet, and become familiar with the financial media.

“We have to have more business savvy,” she said. “I’m not sure law school is the right place to deliver this, but people who have process management skills, who can think and problem-solve like an engineer might, as well as the way a lawyer might, that is dynamite.”

Thal sees the relationship between law firms and corporate departments as less about competition and more about collaboration.

Corporate lawyers naturally develop familiarity with the particularities of their company, she said, and are much more involved in the business of the company than an outside lawyer could be. The flip side is that sometimes unusual circumstances arise, involving peculiar legal matters the in-house team is ill equipped to handle.

“If we have a very high-risk matter where we lack expertise, we will always go outside and we will find the best lawyer who has dedicated his or her life to that particular issue,” she said.

Gayla Thal, JD’80
Senior Vice President for Law & General Counsel
Union Pacific | Omaha, Nebraska

Today, she said, the ongoing quest to diversify the profession is giving women even more opportunity.

Indeed, Lee Udelsman, managing partner at the executive search firm Major, Lindsey and Africa, told Corporate Counsel he expects that over the next five years about a third of all Fortune 500 general counsels will be women.

A second survey, conducted in May and June of 2014 and published in the Fordham Law Review, drew similar conclusions about the challenges facing women in private law firms.

Titled “Diversity in the Legal Profession: Perspectives from Managing Partners and General Counsel,” the survey conducted by Deborah Rhode and Lucy Buford Ricca found that women constitute about one-third of law firm attorneys but only about a fifth of law firm partners, general counsel at Fortune 500 corporations and law school deans.

Women, the survey reported, hold the top legal position at 21 percent of Fortune 500 companies, up from 17 percent in 2009, whereas female lawyers formed 17 percent of equity partners at the nation’s 200 largest law firms in 2013, virtually unchanged from the 16 percent reported in 2009 by the National Association of Women Lawyers.

Rhode and Buford Ricca found that women are less likely to make partner even when controlling for such factors as law school grades, time spent out of the workforce or part-time schedules, and that men are between two and five times more likely to make partner.
1955

Robert E. Rissi, BS'51, JD, Scottsdale, Ariz., a Korean War veteran, was the recipient of an Ambassador for Peace Medal from the Republic of Korea. The medal is an expression of appreciation from the South Korean government to U.S. servicemen and women who served during the Korean conflict.

1969

Daniel J. Cole Jr., BA'66, JD, St. Paul, Minn., received the 2014 Distinguished Service Award presented by the Minnesota Justice Foundation. Cole was recognized for his efforts in providing access to legal services for disadvantaged people, as well as his pro bono representation of dozens of individuals, work for nonprofit organizations and leadership in the bar and with legal services providers. Cole is a shareholder at Briggs and Morgan, P.A., in Minneapolis.

1974

David J. Beacom, BA'69, JD, Broomfield, Colo., is running for reelection to the city and county of Broomfield Council, Ward 5.

1976

Daniel E. Monnat, JD, Wichita, Kan., of Monnat & Spurrer, Chartered, has been named by Chambers USA 2015 as one of Kansas’ top litigators in White-Collar Crime and Government Investigations. In addition, Monnat & Spurrer recently launched a twice-monthly podcast, “Just in Case,” featuring brief analyses of the just-in criminal law cases decided by the Kansas Appellate Courts, the United States Court of Appeals for the Tenth Circuit and the United States Supreme Court. Podcasts can be found at Monnat.com/podcast.

1978

David D. Johnson, JD, Genoa, Nev., joined Duane Morris LLP as a partner in its trial and gaming law practice groups in the Las Vegas office. Stephen W. Kay, JD, North Platte, Neb., wrote the book Episcopal Church of Our Savior-Our Second Century of Service, which was released in December 2014. The Stephen Kay Heritage Room at Episcopal Church of Our Savior in North Platte was dedicated in September 2014.

1979

Robert E. Mundy, JD, Omaha, has earned the Chartered Advisor in Philanthropy designation. Mundy is president of Mundy and Associates/Coordinated Planning, Inc., in Omaha.

1980

Kimberly A. Yelkin, JD, Austin, Texas, an attorney with Gardere Wynne Sewell LLP, has been recognized by Chambers USA 2015 in the insurance regulation area. In addition, Gardere Wynne Sewell’s Government Affairs Practice Group, which is led by Yelkin, topped the Texas Lawyer Lobbying Scorecard after representing more clients and reporting more compensation than any other firm in the state during the 84th Texas Legislature. Yelkin also was selected for inclusion in The Best Lawyers in America 2016.

1982

G. Mark Rice, JD, West Des Moines, Iowa, was recognized by Chambers and Partners in its 2015 attorney rankings in the area of corporate/mergers and acquisitions, banking and finance – Iowa.

1983

Stephen A. Donato, JD, Fayetteville, N.Y., an attorney with Bond, Schoeneck & King PLLC in Syracuse, N.Y., was selected for inclusion in The Best Lawyers in America 2016. Donato is co-chair of the firm’s business restructuring, creditors’ rights and bankruptcy practice. Michael R. Kealy, JD, Reno, Nev., has been recognized in the 2015 edition of Best Lawyers in America. In addition to being listed in Best Lawyers, Kealy has been named the 2015 “Lawyer of the Year” in the Litigation –Real Estate category in Reno. Kealy also was re-elected by the shareholders at Parsons Behle & Latimer to the law firm’s 2015 board of directors.

1984

Rita D’Agostino, BSBA’82, JD, Leawood, Kan., has joined Spencer Fane LLP’s Kansas City office as of counsel in the firm’s governmental affairs and real estate practice groups.

1985

Judy Phillips Bruce, JD, Omaha, has written two novels: Voices in the Wind, about a young attorney in western Nebraska, and Death Steppe, set in Russia during World War II.

1986

Paul F. Millus, BA’83, JD, Floral Park, N.Y., has been named a shareholder with the law firm Meyer, Suozzi, English & Klein, P.C. He also was selected for Long Island Business News’ “Around 50” Award. The award celebrates Long Islands’ companies and business leaders over 40 years old. Millus also was sworn in as president of the Theodore Roosevelt American Inn of Court in September 2014.

1987

Laura A. Chagnon Tighe, JD, Golden, Colo., was appointed as a District Court Judge in the First Judicial District (Jefferson and Gilpin counties in Colorado).

1988

Jeffrey T. Harvey, JD, San Antonio, an attorney with Jackson Walker LLP, was named to S.A. Scene’s 2015 “Best S.A. Lawyers” in General Litigation, PI Defense. Reinaldo Pascual, JD, Atlanta, was elected vice chair of the Syracuse University board of trustees. He was also elected to the board of trustees of the Woodruff Arts Center in Atlanta. Pascual is a partner of Paul Hastings, LLP, and serves as managing partner of the firm’s Atlanta office.

1990

Alexander G. Calfo, JD, Los Angeles, joined King & Spalding LLP’s San Francisco office in July. Calfo is a partner and member of the firm’s litigation department. Lawrence H. Neeches, BA’86, JD, Pontiac, Ill., has been appointed to two new positions: public guardian and public administrator of Livingston County, Ill., and administrative hearing officer for vehicle seizures for the city of Pontiac. Robin D. Shoffner, JD, Chicago, was named a judge for the Circuit Court of Cook County, Illinois.

1992

Frank W. Ierulli, JD, Peoria, Ill., has been reappointed to serve as a member on the Standing Committee for the Attorney Registration & Disciplinary Commission and the Standing Committee on Judicial Advisory Polls within the Illinois State Bar Association. Ierulli is an attorney at the Peoria office of Howard & Howard Attorneys PLLC.

1993

Karen L. Tidwall, JD, Shorewood, Wis., was named to Wisconsin Law Journal’s 2015 Women in the Law, which honors the top Wisconsin women attorneys and judges for their outstanding leadership and achievement. Tidwall is a litigation shareholder in Whyte Hirchboeck Dudek’s Milwaukee office where she co-leads the business and commercial litigation and trust, estate and fiduciary litigation teams.

1994

Kent E. Endacott, JD, Lincoln, Neb., has formed the law firm Endacott, Peetz & Timmer with Jeffrey T. Peetz, JD’83, and Patrick D. Timmer. The firm focuses on trust and estate law and community banking law and is located in Lincoln. Charles R. “Chuck” Walker, JD, and Angela K. Walker-Weber, MBA’97, JD’02, Prescott, Ariz., were featured in Prescott’s The Daily Courier on June 21 (Father’s Day). The father and daughter are partners at Walker & Walker, Attorneys at Law, PLC.

1995

2015

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Bataillon has served as a U.S. District Court judge for the District of Nebraska since 1997. He was nominated for the post by President Bill Clinton, and, after confirmation by the Senate, took his oath of office in October 1997. He would serve as chief judge of the district court from 2004 to 2011.

In 2013, he announced his plan to assume senior status in October 2014. He has continued a full caseload during the search for his replacement. (There is a good chance his successor will be another Creighton law alumnus. In June, President Barack Obama announced his nomination of Omaha attorney Robert Rossiter Jr., JD’81; Rossiter’s Senate hearing is expected this fall with confirmation in 2016.)

Bataillon, who earned both his undergraduate and law degrees from Creighton, credits the University’s Jesuit mission and values with teaching him to think independently.

“Many faculty members, staff, priests and peers at Creighton have impacted my life,” Bataillon says. “Cardinal Francis George added depth to my thinking and made students reflect on who they were and why they were.”

The late Cardinal George, who received an honorary degree from Creighton in 2001, was a faculty member and chair in Creighton’s Department of Philosophy from 1969 to 1973.

“My broad experiences as an undergraduate also helped prepare me for law school,” Bataillon says.

Majoring in political science and minoring in philosophy, Bataillon also took several business courses. He participated in JayTalkers, the University’s forensics team, and for six years worked in sports information and then as an equipment manager in athletics.

“These experiences made clear to me the importance of communication and partnerships,” Bataillon says. “They gave me an appreciation for faculty and alumni support of students.”

Bataillon found Creighton’s faculty, staff and administrators open and available to students, willing to talk about everything from academics to careers to future opportunities. Bataillon credits the late Dan Offenburger, BS’58, MSedu’63, former athletic director, for teaching him invaluable lessons about managing staff, budgets and the press.

Bataillon also recalls law professor Ron Volkmer as someone who had high expectations and looked out for his students. “It is almost impossible to know how many students were inspired and influenced by faculty such as Volkmer,” Bataillon says.

While in law school, Bataillon stayed active in the community by continuing to participate in student government and programs such as the NCAA Summer Youth Sports Camp. He credits Creighton with instilling in students the desire to participate in the public arena.

Called the voice of common sense on the district court bench, Bataillon has been a key figure in building treatment and job programs for people trying to right and rebuild their lives after convictions. For Bataillon, caring for those less fortunate is part of the Jesuit mission that started with his time in the Douglas County Public Defender’s Office and has been with him throughout his career.

Bataillon mentors lawyers and law students on how to practice law at the highest levels. He was a judicial member of the Robert M. Spire Inn of Court from 1999 to 2005; the group met monthly with third-year Creighton law students to give them practical training in law practice and ethics. He also supervises interns, judges competitions and guest-lectures at the School of Law.

Judge Bataillon has been active on numerous boards and committees including the School of Law Alumni Advisory Board; Creighton Law Advisory Board; and the Nebraska Bar Association House of Delegates, to which he has been elected to serve as president in 2017.
Jeanne Sullivan, JD’80, is a co-founder of StarVest Partners, a New York venture capital firm, and one of Forbes’ “5 Most Powerful Women Changing the World in VC (venture capital) and Entrepreneurship.”

Sullivan describes herself as a self-taught techie with a passion for business. In 1981, when the software/tech world was at the dawn of business automation, Sullivan says she saw an opportunity to serve her passion in technology and business. She knew a law degree from Creighton would open doors for her.

“That knowledge and pedigree got me that first role with many computer-savvy lawyers who were managing law office automation and litigation support for large law firms in New York City,” says Sullivan. “It added to my confidence and ability to tackle complex issues.”

Sullivan started her career in business marketing, working for AT&T, Bell Labs and then as an investor with Olivetti Ventures. Sullivan says that having worked with software and data vendors became an entrance to the venture capital world.

“It has been thrilling to be on tech boards in Silicon Valley, Boston and New York ‘learning the ropes’ from some of the greatest entrepreneurs and venture capitalists of our times,” says Sullivan.

StarVest Partners was established in 1999 and funds technology-enabled business services. Sullivan says she worked with lawyers on a daily basis to deal, negotiate and finalize investments, and to build and fund companies.

“My law degree comes in very handy to understand and parse through the critical functions of the investing world and is one of my secret weapons,” says Sullivan.

Sullivan works closely with founders and leaders of several organizations and has a passion for delivering ideas and making things happen. A sought-after speaker who is also a champion for women, Sullivan serves as an advisor for many women-focused organizations that work to “fund and fuel” women entrepreneurs. She has been called a voice for women.

The New York Hall of Science has honored Sullivan with the Vision and Venture Award for her work inspiring girls and women in science and technology (STEM) sectors. She is also the recipient of the OPEL award, Outstanding Professionals for Entrepreneurial Leadership, from the New York Angels, an independent consortium of investors committed to mentoring and funding promising new entrepreneurs.

Sullivan helped form one of the first Angel Networks in the 1990s in New York.

She says the most fulfilling part of her work is seeing a young company in formation and being there to fund it and help support its growth. Sullivan says she stands in awe of and appreciation for the dynamic entrepreneurs with whom she works.

Sullivan is currently a special advisor to her own fund and says she has the freedom to advise entrepreneurs. She recently conducted a TED Talk about working in the venture business.

Sullivan serves on the board of the New York Venture Capital Association; is a member of the Women’s Leadership Board at the Harvard Kennedy School; and is an Athena Entrepreneur Fellow for Barnard College.
Scholer Receives McGannon Award

Steve Scholer, JD’79, senior philanthropic advisor at Creighton, received the Jesuit Advancement Administrators’ (JAA) biennial Reverend J. Barry McGannon Award in July.

The McGannon Award is the highest honor JAA can bestow. The award recognizes individuals who have made a significant long-term commitment to Jesuit higher education and the advancement profession through service to their institution or to other Jesuit institutions and organizations.

Scholer has worked at Creighton for 31 years. His efforts have resulted in significant enhancements to the campus, physically and financially.

2012

Angela Terry Lennon, JD, Omaha, was accepted to the Women’s Fund of Omaha’s 2014 Circles group. The group of young professional female leaders in Omaha supports the mission of the Women’s Fund, promotes networking opportunities for female professionals and develops leadership skills to serve the Omaha community.

2014

Daniel M. Manning Jr., BA’11, JD, Des Moines, Iowa, joined the Lillis Law Firm in Des Moines as associate attorney. His areas of practice include corporate law, real estate matters and litigation.

Weddings

1987

Michael F. Steiner, BSBA’84, JD, and John Burge, Oct. 4, 2014, living in Palm Springs, Calif.

2013

Kristin A. Kooima, MS, JD, and Lance Rozeboom, Dec. 14, 2013, living in Rochester, N.Y.

Births

2002

Jacob M. Steinkemper, JD, and Molly Wickham Steinkemper, JD’03, Omaha, a daughter, Samantha Kelle, Dec. 4, 2014.

2005

Damien A. Gang, JD, and Alicia B. Feldman, MD’04, Fort Collins, Colo., twins, Heath Dillon and Keira Sasha, April 9, 2015. Patrick J. Stanzione and Melissa Heelan Stanzione, JD, Omaha, was accepted to the Women’s Fund of Omaha’s 2014 Circles group. The group of young professional female leaders in Omaha supports the mission of the Women’s Fund, promotes networking opportunities for female professionals and develops leadership skills to serve the Omaha community.

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1997

Shane M. Niebergall, JD, Lone Tree, Colo., has been promoted to partner at the law firm Perkins Coie in Denver.

2002

Adam G. Franzen, JD, Fort Lauderdale, Fla., has been inducted into the Million Dollar Advocates, one of the most prestigious groups of trial lawyers in the U.S. Membership is limited to attorneys who have won million and multi-million dollar verdicts and settlements. Fewer than one percent of U.S. lawyers are members.

2003

Travis L. Turner, JD, Austin, Texas, has formed Piper Turner Bollier, PLLC, in Austin with James Piper and Leslie Bollier. The firm exclusively handles complex family law cases.

2004

Angela C. Nastase, JD, Omaha, is the deputy Title IX coordinator at the University of Nebraska at Omaha.

2005

Philip B. Katz, JD, Omaha, was named one of the Top Ten Attorneys Under 40 for the state of Nebraska by the National Academy of Family Law Attorneys. Katz is an attorney with Koenig Dunne Divorce Law in Omaha.

2006

Gregory R. Lunt, JD, Sandy, Utah, was named equity shareholder at Workman Nydegger.

2007

Adam L. Cockerill, BSBA’04, JD, Bellevue, Neb., has joined the Omaha law firm Koley Jessen P.C., LLO, in the employment, labor and benefits practice group.

2008

Brian J. Blackford, BA’05, JD, Omaha, has opened Blackford Law, LLC, an immigration law practice specializing in removal/deportation defense and family-based immigration.

2010

Melissa A. Schilling, JD, Burlington, Iowa, joined Dickinson Law in Des Moines, Iowa, as an associate focusing on traditional labor law and employment litigation.

2012

Shad E. Sumrow, JD, Omaha, was named one of the Top Attorneys Under 40 for the state of Nebraska by the National Academy of Family Law Attorneys. Katz is an attorney with Koenig Dunne Divorce Law in Omaha.

2006

Jason J. Biss, JD, and Jill Tyner Biss, BS’06, Lafayette, Ind., a daughter, Keira Rose, Jan. 3, 2015. Dr. Eric Myers and Katherine Ecker Myers, BA’03, JD, Albuquerque, N.M., a son, Harrison Eric, Sept. 15, 2013.
In Memoriam

John F. Daly, PhB’38, JD’40, Omaha, June 9, 2014.


Joseph J. Forman, JD’48, Omaha, Nov. 28, 2014.


Francis J. “Joe” Cosgrove, JD’51, Omaha, July 1, 2015.


James J. Holmberg Sr., BSC’51, JD’54, Omaha, June 2, 2014.

E. James Kula, BS’52, JD’54, Columbus, Neb., June 28, 2014.


James H. Moylan, BS’52, JD’57, Omaha, May 21, 2015.


Kenneth B. Treinen, BS’54, JD’57, Omaha, Nov. 9, 2014.


Henry G. Brown, BS’54, JD’59, Omaha, July 10, 2014.


Steven J. Lustgarten, JD’60, Omaha, Aug. 25, 2014.


Joseph J. Vance, JD’60, Ralston, Neb., Nov. 29, 2014.

James G. Vetter Jr., JD’60, Dallas, May 17, 2015.


S. Frank Meares, BS’58, JD’61, Newport, R.I., June 5, 2015.

Ronald J. Eischied, BSBA’60, JD’63, Murfreesboro, Tenn., June 14, 2015.


Wayne B. Henry, JD’72, Council Bluffs, Iowa, June 9, 2015.


Bernadette M. Hahn, BA’71, JD’74, Cedar Rapids, Iowa, March 12, 2015.

Hon. John P. Murphy, JD’74, Omaha, March 3, 2015.

Michael R. Drahot, BSBA’74, JD’78, Omaha, Jan. 31, 2015.


Michelle M. Heier, BA’76, JD’80, Clermont, Fla., Jan. 6, 2015.

Clark J. VanSkiver, JD’81, Omaha, May 30, 2015.


Terrence P. Maher, BSBA’81, JD’84, Omaha, Aug. 12, 2014.


Christopher L. Ingrim, JD’86, Belton, Texas, June 21, 2014.


Barry J. Tobin, JD’87, Seattle, July 6, 2015.

Larry J. Steier, JD’88, Omaha, June 8, 2014.


Michael T. Emdin, BSBA’93, JD’95, Aurora, Colo., July 2, 2015.

Leah R. Gadzikowski, JD’05, Omaha, Aug. 17, 2014.

While Creighton’s School of Law suffers no shortage of graduates who have soared to great heights, Lyle Strom, BA’50, JD’53, sees things from a particularly lofty altitude, and has done so for three decades.

This fall he will mark 30 years as a judge on the United States District Court for the District of Nebraska. He was 60 years old when appointed to the federal bench by President Ronald Reagan on Oct. 28, 1985, 62 years old and eligible for Social Security when he became chief judge in 1987, and 70 years old when he took senior judge status in 1995.

That, in the tumbling waterfall of years that has been Strom’s legal career, was 20 years ago. Today, the 1953 Creighton law graduate continues to handle a load of some 120 cases at the age of 90 and looks forward, as he has often said, to assembling a jury when he turns 100 years old.

Strom, avuncular and grandfatherly as he enters his 10th decade, holds court on the third floor of the federal courthouse at 18th and Dodge streets where he dispenses justice according to federal guidelines. Unless, that is, he feels the guidelines are unjust, in which case he has occasionally passed lighter sentences only to find himself reversed by the 8th Circuit Court of Appeals.

Born the son of a teacher and an oil trader, Strom was reared in a hardscrabble area of north Omaha near 16th and Evans streets, tempted fate by throwing footballs atop grain silos that still stand, and developed a lifelong connection to the Catholic Church and to programs helping youth.

His support of the Boy Scouts of America, for example, has been stalwart. He was a key player in establishing Nebraska’s Inns of Court where older attorneys mentor the rising generation, and youth mentoring has long been a cause, a dedication that led to the naming of Nebraska’s mock trial competition as the Judge Lyle Strom High School Mock Trial Championship.

Strom has always cut an assertive figure.

He spent the first 32 years of his legal career with the Omaha law firm of Fitzgerald, Schorr, Barmettler & Brennan, where he became a sought-after trial lawyer and was placed annually on “The Best Lawyers in America” list until his judicial nomination removed him from the fray.

In a sense, he waded back into the fray in 1993 when he dissented from United States Sentencing Commission guidelines concerning sentences for powder and crack cocaine. Penalties were significantly harsher for dealing crack cocaine, typically the province of poorer African-American dealers, than for dealing powder cocaine, more usually used by wealthier, white defendants.

His decision to hand two black crack cocaine dealers a lighter sentence than required by the guidelines sparked a national debate, which Strom said eventually resulted in more equitable sentencing guidelines.

That dissent was rooted in a lifelong commitment to helping put things right.

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While Strom is very much a man of his generation, having served in the U.S. Naval Reserve during World War II, he acknowledges, looking back on his years at Creighton, that today’s law students receive a more comprehensive legal education.

In a 2002 interview with Creighton law professor Richard Shugrue, Strom recalled engaging in just one practical experience during his law school years — two if a legal clinic run by the senior students is counted.

“We had only one practicum,” he told Shugrue. “We formed into teams and wrote a brief on some issue and then argued it before three lawyers and/or judges here in Omaha.”

Nevertheless, he recalled, the quality of his teachers was stellar, citing in particular William Sternberg, P. Raymond Nielson and Paul Gregg, S.J., and Henry Renard, S.J.

Sternberg, who began teaching at Creighton in 1917, was in the twilight years of his career and teaching contracts when Strom encountered him. Gregg was regent of the law school and taught tort. Both men, Strom said, rank among the greatest teachers he has known.

His memory of Fr. Renard is particularly colorful.

“He was one of those people who, every time he looked at you, you knew he was looking at your soul,” Strom told Shugrue. “He had piercing eyes that looked right through you.”

Strom lives in Bellevue these days, in the leafy Fontenelle Hills subdivision, a place he discovered 20 years ago and which delivers him respite from the rigors of federal law.

If things work out as planned he will still find refuge there 10 years from now, perhaps after assembling a jury.
The appellation Red Mass refers to the annual Catholic Mass that commences the new court term. Its history dates to 13th century Europe when it was celebrated prior to opening the ecclesiastical courts, to invoke divine guidance upon those responsible for administering laws and justice. The name of the Mass is derived from the red vestments worn by the priests, to signify the fire of the Holy Spirit, and by the scarlet robes worn then by judges and doctors of law.