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SCHOOL OF LAW

Alumni Golf Tournament
June 15, 2001

Indian Creek Golf Course
Omaha, Nebraska

It's time for the annual golf event. This year Omaha area Law alums and faculty will join other Creighton University alums for a day of golf.

More Information Coming Soon.
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I THINK WE CAN AGREE THAT IT HAS BEEN AN EXTRAORDINARY YEAR AT CREIGHTON LAW SCHOOL.

The School continues to make progress on many fronts. Our faculty continues to excel in both teaching and scholarship, as you can see in the extensive Faculty Notes section. As I told you in last year’s letter, last fall we added Craig Dalton as an assistant professor and Ken Melilli as a visiting professor of law. Both are wonderful additions to our already-talented faculty, and to everyone’s delight Professor Melilli has accepted our offer to remain on the faculty permanently. Starting next fall we will add Michael Kelly as an assistant professor. Professor Kelly comes to us from the faculty of Michigan State University-Detroit College of Law. He earned his J.D. from the University of Indiana, Indianapolis and holds an L.L.M. from Georgetown. Professor Kelly is a recognized expert in international law and has several published articles to his credit; he brings to the School a track record of excellence in both teaching and scholarship.

This year we were visited by two Supreme Court Justices. In the fall, Justice Anthony M. Kennedy spent two days at the law school; over the course of his visit he taught a combined section of the Constitutional Law class, met with faculty and alumni, and then delivered the principal address at our annual dinner. This year’s annual dinner drew almost 700 friends and alumni of the School to the SMC museum. Justice Kennedy’s address, Tom Riley’s receipt of the Alumni Merit award, the recognition of our 50-year class, and all the class reunions combined for a memorable evening.

Justice Kennedy’s visit is covered extensively in this issue, and the visit of our other Supreme Court Justice-in-Residence - Justice Clarence Thomas - will be treated extensively in the next issue. Justice Thomas spent a week at the School, co-teaching with Professor G. Michael Fenner a 40-student course entitled “Supreme Court Seminar”, which focused on important constitutional law issues.

Justice Thomas, like Justice Kennedy, was very accessible to our students, and addressed all of them in a question-and-answer format. Justice Thomas’s wife, Virginia Lamp Thomas ’84, and great-nephew, Mark Martin, also visited. Mrs. Thomas delivered a well-received lecture on non-traditional law practice in Washington, D.C. Justice Thomas found his visit to Creighton Law School so invigorating that he has indicated his intent to make a return visit in the Spring of 2003.

Support from our friends and alumni remains vital to the School. Last year we set a record for annual giving, and we hope to be able to continue to build on this success. In an effort to build even better bridges between the School and our alumni and friends, we are creating a Law School Advisory Board. United States District Judge Robert Pratt ’72 has agreed to chair the Board. The Board will be a group of about 35 of our alumni and friends drawn from across the country. Because board members will serve three-year terms there will be a continuing need for persons interested in serving. If you have ideas as to persons who would be good additions, please drop me a note and I will forward your suggestions to the Board’s nominating committee.

The Abrahams Legal Clinic is a vital part of both our educational program and our Jesuit service mission. This spring, with the aid of a grant from the Nebraska Commission on Public Advocacy, we have expanded our services to South Omaha. With Nicole Neesen ’91 as our bilingual staff attorney, we are now seeing clients at the Juan Diego Center. As in the past, the Clinic continues to use students, our faculty director, and our staff to provide free legal assistance to persons in need in Douglas County.

And speaking of the Clinic, this spring sees the formal installation our Director, Professor Kate Mahern, as the holder of the Connie Kearney ’84 Chair in Clinical Legal Education.

We are continuing to meet the demands of a changing legal educational environment with renovations to our building. The renovations to convert Room
120 to a high technology courtroom are now complete, and this summer work will begin to renovate Room 123 to a more functional seating design with extensive technology.

The admissions picture at the School remains strong. Last fall we enrolled another strong class with a median LSAT over the national midpoint and an average undergraduate GPA of approximately a B plus. This year we replaced our viewbook with a CD-Rom that includes information on the School, video clips, information on the Omaha area, an on-line application, and much more. Our web site, http://culaw.creighton.edu, has undergone extensive renovations.

The placement picture for our students builds on success. This year saw a record number of employers interview on campus. Our placement rates continue to rank strongly and our graduates' median salary continues to move forward.

Looking back on my two years thus far as Dean of the Creighton University School of Law, I can say that it has been one the most positive experiences of my life. Creighton Law School is an extraordinary community and blessed to be part of an extraordinary university.

I look forward to working with you in the coming years.

Sincerely yours,

Patrick J. Borchers
Dean and Professor of Law
By Professor Richard E. Shugrue

There's an electricity in the air when a United States Supreme Court Justice visits the Law School.

Students—who have been poring over the opinions of the Court in class—finally get an opportunity to see the author in person, to listen to what the Justice has to say, to ask questions, even exchange pleasantries.

At Creighton, the arrival of Justice Anthony M. Kennedy this fall was a signature event of the academic calendar. The Kennedy visit was the first of two, with Justice Clarence Thomas scheduled to teach a seminar on the Supreme Court in February.

Justice Kennedy came to the Law School just before the start of the October, 2000 term, because of his long relationship with Dean Patrick Borchers. When he was fresh out of law school, Borchers was tapped by the then United States Court of Appeals jurist to serve as a judicial clerk.

The Justice agreed to teach a first-year Constitutional Law class and, that evening, to address the annual alumni dinner.

Heidi Krings, a second-year law student originally from Columbus, Nebraska, said she was "in awe" at the opportunity to hear and meet the Justice. A former aide to Sen. Chuck Hagel (R-Neb.) on Capitol Hill, Krings said her Washington experience exposed her to political and governmental "celebrities" on a daily basis. "But meeting a Supreme Court Justice was a once-in-a-lifetime experience for most of us in the Law School," she added.

Krings noted that Washingtonians rarely see Justices at events. The chance to hear the Supreme Court member was "definitely unforgettable."

That impression was echoed by another 2-L, Adam Franz of Ayr, Nebraska, who had thought that a member of the Supreme Court "would speak over our heads." He added, "Justice Kennedy's ability to talk on our level made an indelible impression on me, both as a law student and as a person."

Kennedy: A Great Teacher

Kennedy had a reputation as a great teacher long before he became a judge. A Phi Beta Kappa graduate of Stanford University who earned his law degree cum laude at Harvard, Kennedy was admitted to the California Bar nearly 40 years ago. A Sacramento native, he served in the National Guard and then began practicing with a San Francisco firm.

In 1963, his father, who was a respected Sacramento attorney-lobbyist, died, and the young lawyer took over his dad's practice in the California capital. He also began his own involvement in politics and legislative
affairs, developing a close friendship with another young legislative lawyer, Edwin Meese, a future United States Attorney General. When Meese left lobbying to work for the newly-elected Governor Ronald Reagan in 1967, Kennedy continued his association with Meese. He helped draft California’s ballot initiative to limit state spending, for example.

This work, Kennedy’s reputation as a private attorney and in public affairs, and his service as an adjunct professor at McGeorge School of Law (from 1965 until his ascent to the Supreme Court in 1988) could not have but helped earn him the recommendation from Governor Reagan to then-President Gerald Ford to fill a vacancy on the Ninth Circuit in 1975.

When Lewis F. Powell, Jr., announced his resignation from the Supreme Court in 1987, Kennedy was named to fill the vacancy by President Reagan. Many court-watchers remember Kennedy as the third nominee to the vacancy, after the failed candidacies of Robert Bork and Douglas Ginsburg. Kennedy received the highest recommendation of the American Bar Association’s Standing Committee on the Federal Judiciary. Its praise was based on the jurist’s integrity, judicial temperament, and professional competence.

**A Centrist-Conservative**

Lawyers and scholars who study the work of the Supreme Court characterize Justice Kennedy as a “centrist”, who often holds the balance of power between the Court’s more conservative and liberal wings. It wasn’t always so, however. By the end of the October, 1988-1989 term, Kennedy had voted with Chief Justice William Rehnquist in 90 percent of the cases and with Justice Antonin Scalia in 89 percent of the cases.

In the 1990s, the Court re-examined the nature of federalism. Justice Kennedy played a major role in this work, and occupied the middle ground. He was the author of *Alden v. Maine* in 1999, and argued that states “are not relegated to the role of mere provinces or political corporations, but retain the dignity... of sovereigns” in the American system of government.

His opinion in *Alden* built upon his fellow justices’ work in cases such as *New York v. United States*, in 1992, *United States v. Lopez*, in 1995, and *United States v. Printz*, in 1997. Writing for the five-person majority in *Alden*, Kennedy ruled that the Eleventh Amendment prohibited Congress from using its Article I powers to allow private parties to sue state governments for money damages in federal courts.

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JUSTICE KENNEDY TEACHES CLASS

Kennedy: States Are Partners

Kennedy propounds the doctrine of dual sovereignty in which, as one scholar put it, “the internal operation of both the state and federal governments were to at least some extent immune from direct interference from the other party.” This conclusion should not be surprising from a jurist whose concurring opinion had said in the 1995 case of United States Term Limits, Inc. v. Thornton that “Federalism was our Nation’s own discovery. The Framers split the atom of sovereignty.” It is at least noteworthy that in Thornton, Kennedy concurred in a case in which the majority was written by Justice John Paul Stevens, and a vigorous dissent on behalf of himself and Justices Thomas, Scalia, and O’Connor, was filed by the Chief Justice.

Kennedy’s work on the high court has inspired Yale Law School Professor Akhil Amar to write, “The Justice is a teacher here; all Americans are his students; and he tries to reach us by using words and images we can understand.” Nowhere better was Kennedy’s skill as a superb teacher seen than during his Constitutional Law class at Creighton. Dean Borcher’s noted that Justice Kennedy had a reputation at McGeorge as a great teacher. “Students fought to get into his Con Law class,” the Dean said. “He also called upon his clerks to do practice rounds of moot court so that he would be thoroughly prepared to judge competitions;” Borcher added, and recalled that the judge “would ask us clerks to give oral presentations on issues involved in his exams, so that his questions made perfect sense.” The Dean declared that he would “trade a month of my very best education for an afternoon of working closely with Judge Kennedy. He is, quite simply, a great teacher.”

Those sentiments were echoed by Creighton students who had the opportunity to participate in Justice Kennedy’s class. “He is a master of the Socratic method,” 2-L student Nicole Lindsey of Omaha, said. “I could understand every question and see where he was taking the first-year students,” she added. “Maybe it was because I wasn’t being asked the questions, but it was as much fun as it was exciting to be in the Spaceship that morning!” First-year student Karen Douglas of Omaha, who had spent a number of years as a legal assistant, was amazed at how “down to earth” Justice Kennedy’s classroom presentation was. “I think of the Court as being remote, but he was so human, and so clear, that it was a wonderful class.”

“I was fascinated by his explanation of the interpretation of the Constitution as the swing of a pendulum,” Joe Villareal, a 1-L from Redlands, California, observed. “The Justice makes you think about the Constitution as a living document, something other than a cold and remote instrument,” he added.

White: He Always Made Time for Students

Creighton Professor Michaela White was on the McGeorge faculty and knew of Kennedy’s reputation as a “master teacher.” She explained that he taught in the night program, “but still made time for school functions.” She vividly remembers students she had taught in their first year reporting to her what a great teacher Kennedy was for them in their second-year Con Law course.

Alums, faculty and students attending the banquet at the Strategic Air Command Museum near Eugene Mahoney State Park were impressed not only with the Justice’s cordiality and warmth, but with his insights about the future of American democracy and the role of the citizen in a free society.

These are themes he has returned to time and again throughout his tenure on the Court. In 1997, for example, he addressed the American Bar Association’s annual convention challenging the lawyers of the nation to uphold three principles:

The responsibility of the individual, who must be held accountable for his or her own actions;

A commitment to rationality, or the belief that citizens united in law can examine a problem with adequate information and come to a reasoned, common conclusion, as in jury trials; and

The observance of civility, the mark of an accomplished and superb professional, but also an end in itself.

Students, faculty and alumni of Creighton Law School were impressed with the wit of the Justice. Some Washington insiders have speculated he might be elevated to the Chief Justice’s seat when William Rehnquist retires. But whatever his future, his presence at Creighton changed many stereotypes of a remote high jurist. As Lindsey, the 2-L student who attended both the class and the banquet, put it, “I was particularly impressed by his ability to weave interesting human insights into the work of the court with profound lessons on law and the profession.”
FAMILY, FRIENDS

By Hollie Mason

When students decide to begin a law school career, they commit themselves to a challenging three-year journey. Creighton law students recognize that it is not just the students beginning the journey of law school, but their family and friends as well. This notion of family and friends sharing the law school experience with students is what inspired the creation of Creighton Law Partners’.

Richard Vroman, a second-year law student and founder of Creighton Law Partners, explains why he felt the need to start this organization:

“I realized early in my first year at Creighton that I was spending less time with my wife, Karen, and more time with my benchmarks. Even though Karen and I were fully aware of the demands of law school, being apart was not making our marriage stronger. I also realized I was not alone. All of my benchmarks had family or friends in their lives. These family members or friends, whether willing or not, are sharing the stress of law school. In order to alleviate the stress, students often get together to socialize. This socialization, however, is not always at times and places where students with families can participate. Thus, I saw the need for family-oriented activities and services. Since founding Law Partners, Karen has begun to feel much more comfortable at school functions. She feels more involved and therefore more understanding of what demands are on the students. Through Law Partners, Karen and I have met many students, spouses, friends, and family members with whom we socialize. And, since Karen feels more involved and more comfortable at functions, stress is reduced and we truly are enjoying the law school experience together.”

Creighton Law Partners (“CLP”) is a student-run organization that focuses on supporting students and their families during the law school experience. CLP’s mission is dedication to the importance of family life and the recruiting of students with family for social activities and service functions, in which the whole family can participate and enjoy.

The organization provides family-oriented activities for students, families, and friends to enjoy outside of the law school setting. These activities give students a chance to relax and socialize with students who are in similar situations and have had similar experiences during law school. CLP designs its activities to give family and friends an opportunity to get involved during the law school experience. CLP believes it is valuable to have such family and friends involved both with the law school and in the planning and organizing of CLP’s activities. This participation provides the student’s family and friends with an opportunity to share information and experiences with other students’ family and friends during the law school years.

CLP has planned and participated in several activities this past year. Starting in April, Law Partners held an Easter Egg Hunt at Zorinski Lake for the children of students, faculty, and staff. The Hunt was a great success, as approximately thirty children spent a frigid April afternoon gathering eggs, collecting prizes, and meeting the Easter Bunny. Parents enjoyed the Hunt as well. Spending quality time with the family is one of the main goals of CLP.

In the Fall of 2000, CLP co-sponsored a panel of non-traditional students with the Women Law Students Association. The panel group spoke to law students on how to balance family life and law school. Professor Ken Melillo’s wife shared her experiences as the wife of a law student during “their” law school years.

Other CLP activities have included small-scale social gatherings, an after-finals dinner, volunteering at the Open Door Mission during Thanksgiving Break, and a bake sale. CLP is dedicated to supporting its student members, and our activities center around giving support. The activities planned by the organization are designed so students get to spend time with their family and friends while the entire family participates and interacts with other law school students and their families. The organization also conducts activities to raise funds to help subsidize the cost of our activities so that all students and their families can afford to participate.

The most recent fund-raising activity CLP conducted provided support to students during finals and gave the organization an opportunity to fund additional family activities. The organization provided a “Survival Kit” for students during finals. The kit consisted of snacks, school supplies, discount food coupons, and words of encouragement from family and
friends. Many Creighton law students were surprised when their family and/or friends participated by purchasing the kits and returning personalized cards of encouragement for their law students. After CLP compiled all the responses, sponsored law students received letters asking them to pick up their “survival kits” prior to finals. The family and friends of our law students responded very well to the idea, and jumped at the chance to support their law students during finals. Creighton Law Partners received several thank you notes and positive comments from those who participated. The “survival kit” was one way that Creighton Law Partners could support students and at the same time get family and friends involved.

Student and family support continues to be the main focus of the organization, but another important aspect of CLP is giving back to the local community. A portion of the funds raised by the organization has been donated to charity in the Omaha area. Students and family members involved in the organization have also donated their time to charity. Creighton Law Partners believes in supporting the community as well as its law students. It is the time and dedication of the students who run this organization that make it possible to provide such support to its members.

Richard Vroman is the President and founder, Janette Nelson is the Vice President, Matt Thurber serves as the organizations secretary, Greg Walther is the Treasurer, Adam Crayk is the activity director, and Hollie Mason is the chair for fund-raising and community services. These students, along with their families and friends, dedicate themselves to the operation and future goals of this organization.

The present goals of the Creighton Law Partners include planning more family outings for the year 2001, the second annual Easter Egg Hunt, supporting students during spring finals with finals “survival kits”, and expanding our membership to include students who wish to carry on the mission of the organization.

If you would like more information about Creighton Law Partners or would like to inquire regarding membership please visit our web sight at http://culaw.creighton.edu/~partners.

Say you had called the Psychic Hotline last October and asked about the election then on the horizon, and say one of Dionne Warwick’s staff psychics had told you that the cards revealed to her that the United States Supreme Court would determine the outcome of the next presidential election. You’d have asked for a second opinion. You’d have said to her “Ma’am, you’ve gotten it backwards. The Supreme Court doesn’t determine the election. The election determines the Supreme Court. I’d like to speak to someone else please.”

Say she persisted: “A majority of the Court will intervene to remove any possibility that the man who won the popular vote will win the vote in the Electoral College. The Court will be deeply troubled by a decision from a state supreme court from the Deep South, and it will reverse that state court, with some pretty strong negative language, perhaps changing the outcome of the election.” If you are a Democrat, like me, you’d have thought, “I don’t pay people to talk to me like that. But, I’ll take what I can get and be happy that Al Gore is going to be our next president.”
Now, move forward to November 7, 2000 through December 12, 2000, and say that you watched the returns come in, and then come in again, and then again. Thirty-five or so days of streaming election returns. When it was all over, you saw the most active states' rights United States Supreme Court in modern times—and maybe ever—intervene to stop the Supreme Court of Florida from determining how the votes of Floridians would be counted. *Bush v. Gore*, 531 U.S. ___ (2000).

You might come away from all of this thinking that most everything about this election seemed backwards. The new millennium has thrown us into some sort of alternative political universe, the kind of place where Superman is evil. If you thought that, I'd feel your pain—Is it still legal to say that?—but you'd be wrong. I think you'd be wrong, at least. I don't think it really was so backwards.

**Unequal Recounts**

The Constitution does not specify a right to vote in presidential elections. In 1966, for the first time, the United States Supreme Court held “that once the franchise is granted to the electorate, lines may not be drawn which are inconsistent with [equal protection].” *Harper v. Virginia State Board of Elections*, 383 U.S. 663, 665 (1966). Equal protection applies to voter access to the ballot. Once this is so, surely equal protection also applies to counting the votes. What good, after all, is a right to vote without an equivalent right to have the vote counted? (“Let ‘em vote. We just won’t count ‘em.”) The United States Supreme Court held that the recount ordered by the Florida court would violate equal protection as it applies to counting ballots—this particular recount would deny equal protection of the law to some voters.

But, you may say, equal protection is exactly what the Florida court was doing: insuring that everyone's vote was counted equally. Well, I would say, yes, that is what the Florida court was trying to do, but its effort fell short of what equal protection requires. A recount that recounts a few, but not all precincts, and that uses different standards from one precinct to the next is an unconstitutional remedy. (And it is not just different standards from one precinct to the next: During the oral argument the second time *Bush v. Gore* was in the United States Supreme Court, Justice Kennedy asked Vice President Gore's counsel David Bois the following question: “From the standpoint of the Equal Protection Clause, could each county give their own interpretation to what ‘intent’ means, so long as they are in good faith and with some reasonable basis finding intent? Could that vary from county to county?” David Bois replied: “I think it can vary from individual to individual.”

Seeming a bit incredulous, Justice Kennedy persisted: “Even in one county [it] can vary from table to table on counting these ballots?” Bois, essentially, answered yes. In the per curiam opinion, the Court stated: “As seems to have been acknowledged at oral argument, the standards for accepting or rejecting contested ballots might vary not only from county to county but indeed within a single county from one recount team to another.”) A recount that recounts a few, but not all precincts, and that allows each recount table to adopt its own standards, violates equal protection. The Court stopped the recount.

This “standard” is not consistent with equal protection. The irony here is that this application of equal protection, as I argue below, locks into place a relative overrepresentation of rich-white votes and underrepresentation of poor-minority votes.

Nonetheless, in the case in front of the Court, the Florida court's remedy was unconstitutional.

**Where's the Remedy?**

The equal protection problem in *Bush v. Gore* is twofold: First, the recounts as being conducted in Florida did not provide equal protection. Second, there was no way to do a recount that provided equal protection, not really.

If there were undercounts—and surely there were—then what was the remedy for these undercounts? What is the remedy for hanging chads and dimpled ballots? What is the remedy for the large numbers of apparently erroneous votes registered for Pat Buchanan in predominately Jewish neighborhoods—Pat Buchanan, who barely got any votes in neighborhoods filled with his natural constituents, thereby seeming to prove that he has no natural constituents? What is the remedy for the large number of ballots that did not register any vote for President, and, really, before we talk even about a remedy for the no votes, how do we even tell if this is a problem? There is no rule that if we do vote we must cast a ballot in each and every race.

Manually count all of the votes in every county where someone filed a timely challenge? Recount the entire State of Florida? Is one of those the remedy? Agree on some standard for dealing with chads and dimples and manually recount the entire state? How could that have been done in time? Shall we hold off the inauguration of the new President and let then-President Clinton keep the Pardon Power until we can develop a set of standards and complete the recount, hoping for equal protection there? Should we do a statistical analysis, a kind of virtual recount, turning the fate

**CONTINUED ON PAGE 10**
of the election over to the mathematicians? How would that work in an election where the margin of victory is within the margin of error?

And really, even if we recounted all of Florida's votes, how could that provide equal protection of the law? Here is the biggest piece of news coming out of the last election: It was a tie! There were six or seven states that stayed for a long time too close to call. There were six or seven states that were close enough that they should be recounted if Florida is recounted, and if we are going to recount one, shouldn't we recount them all? To really provide equality in the vote, wouldn't we have to recount them all?

New Mexico: 48% Gore and 48% Bush, a Gore margin of fewer than 500 votes.
Florida: 49% Gore and 49% Bush, a Bush margin of 930 votes.
Iowa: 49% Gore and 49% Bush, a Gore margin of some 4,000 votes.
Wisconsin: 48% Gore and 48% Bush, a Gore margin of some 5,000 votes.
Oregon: 47% Gore and 47% Bush, a Gore margin of some 6,000 votes.
New Hampshire: 47% Gore and 48% Bush, a Bush margin of 7,282 votes.
Minnesota: 48% Gore and 46% Bush, a Gore margin of some 50,000 votes.
Tennessee: And Gore lost his home state, but not by all that much: Bush won by 79,489 votes.

And all of that added up to a Bush victory in the Electoral College by one vote ... one vote. And a United States Senate that is split 50-50. The election was a tie.

If we are going to agree on chad-and-dimple, undercount and undervote standards and recount all of Florida's votes, to give Florida voters equal protection, then don't we have to agree on standards and recount all of Iowa and Minnesota and Wisconsin and New Hampshire and New Mexico and Oregon, and perhaps even Tennessee, in addition to Florida? Don't we have to give equal protection of the law to Iowans, Minnesotans, Oregonians, and the voters of Wisconsin, New Hampshire, New Mexico and Tennessee? How could that ever have been done in time? How is it possible to get a recount that provides equal protection in a nationwide election that was a virtual tie in six states? It was not possible. The Supreme Court knew it was not possible.

The election was a tie. We cannot order a new election. We cannot recount the whole country. We cannot recount one sixth of the country. Not in time. And even if we did recount the whole country, what then? If the standard is What did this voter intend to do? there will be a significant number of ballots where we simply cannot answer that question. We could never tell for certain what every individual voter's intent was. Was a dimple a failed attempt to vote? Was a dimple a near vote intentionally pulled back? This election was so close that even a recount of the whole country could not definitely answer this question. Based on the intention of each voter, which of these men absolutely won the Electoral College vote? It was a tie.

Oh sure, we do have a President. I don't mean it is a tie in the sense that there is no winner declared. I do mean that the election was so close that the margin of victory was within the margin of error. If the standard applied is that we will count each ballot as the voter intended it to be counted, then there is no way to say which candidate won the Electoral College. Using this standard, it is a tie and a "winner" cannot be determined.

The Florida court's remedy did not provide equal protection. In fact, in the context of this case, there was no remedy for the equal protection problem found by the majority. (There is a remedy—more on that in a minute—but there was no remedy in the context of this case.) All that was left for the Supreme Court to do was to go back to first principles and enforce article II, §1, cl. 2 of the United States Constitution: "Each State shall appoint [electors for President and Vice President] in such Manner as the Legislature thereof may direct." That clause specifically gives the power over this matter to the state legislature; by judicial interpretation the legislative rules applied must be those in place going into the election—no changing the rules after the game has been played; and in Bush v. Gore the Supreme Court enforced the state statute controlling at the time of the election. It struck down the state court's unconstitutional remedy and enforced article II's command that this power lies with the state's legislature.

Isn't This a States' Rights Court? What's Up With That?

"Okay," you might be saying at this point, "let's say that there was an equal protection problem and let's say that there might not have been a timely remedy, but the state supreme court thought it had a remedy. Apparently it thought it had one that might work. And isn't this a states' rights United States Supreme Court? The common wisdom is that the justices who ruled against the state are the biggest states' rights justices perhaps in the history of that Court. How can you square this result with states' rights?"

And you might add: "Isn't the decision in Bush v. Gore simply a blatantly political power play without any basis in law, where five of the majority Justices simply did what it took to get their man - or their man's son - into the office of President of the United States? Didn't they pull this equal protection principle mostly out of thin air just so they could steal the election from Al Gore? Hasn't the system broken down?"

The answer is No on all counts. Count one, they stole the election: These Justices did not steal the election from Al Gore. First, this election was a tie. Neither of these men won or lost
in any absolute sense. Second, Al Gore should have won by a landslide. "It's the economy stupid," to quote from an earlier election, and the economy has hardly ever been better than it was right before the election. As a friend of mine said to me: "What don't you like about peace and prosperity?" Al Gore lost the election for himself. He did not need the Supreme Court to do that. The election was a tie in a year when one candidate should have won running away.

**Count two, they violated their own core beliefs as states' rightsers.** Yes, Rehnquist, O'Connor, Scalia, Thomas, and Kennedy are the Justices who have lately been enforcing states' rights, returning power to the states. They have used the doctrine of Federalism, *New York v. United States*, 505 U.S. 144 (1992); *Garcia v. San Antonio Metropolitan Transit Authority*, 469 U.S. 528 (1985), the Eleventh Amendment proscription of federal litigation against a State by citizens of another State, *Alden v. Maine*, 527 U.S. 706 (1999); *Seminole Tribe of Florida v. Florida*, 517 U.S. 44 (1996), and the ancient axiom that the Congress of the United States is a body of enumerated powers, *United States v. Morrison*, 529 U.S. 598 (2000); *United States v. Lopez*, 514 U.S. 549 (1995), to return power to, or to retain power in, the states. This, however, is not who they are, it is only a part of what they do. These are the states' rights Justices, but they are federal power Justices too. Day in and day out, these five Justices enforce federal power. Day in and day out, these five Justices find (through their own opinions and their votes on petitions for certiorari) that the federal government has the power to control situations where there is a demonstrable connection to a federal interest found in the Constitution. See *Reno v. Condon*, 528 U.S. 141 (2000) (upholding a federal statute restricting the states' ability to sell information collected by their motor vehicle departments on local drivers and vehicle owners, even though the statute regulates the states exclusively, restricts their ability to use their information as they please, and costs them time, effort, and income). It is a false and too narrow view of these five to say that they are for state power and to imply that they are only for state power.

Look at it this way. Consider these propositions: There were problems with the registering and counting of the votes in Florida, and in other states. There is a distinct and important federal interest in the election for the President of the United States. The question is which level of government has the final say regarding this distinctly and terribly important federal matter?

It is no surprise to me that the federal government has the final say. Further, it is no surprise to me that a state's rights federal court would find that the federal court has the final say. There are a number of cases where conservative Justices have enforced federal power over state power. *Bush v. Gore* involves state power exercised in an area of powerful federal concern. These five Justices are not shy about enforcing federal power in areas clearly of federal concern.

In addition, this case was not so much about states' rights versus federal rights as so many people seem to say it is. This case was about state's rights versus states' rights, with a federal constitutional provision thrown in for good measure. This case is about protecting the state legislature's power, as established in article II, §1, cl. 2 of the United States Constitution, from invasion by the state court.

**Count three, Bush v. Gore was a blatant political power play without any basis in law.** This is the problem I see from many of my fellow Al Gore supporters: They believe the decision was perfectly political and therefore utterly unprincipled. I am not naive. I may be a bit of a Pollyanna, but I am not naive. The judicial process is part law and part politics. You can err by being too naive, and saving that politics played no part in this opinion. But you can just as easily err by being too cynical and saying that politics was everything and law played no part in this decision. There is law behind this decision. There was an undoubted and, for peacetime, unprecedented federal interest at stake and there was a controlling state court judgment ordering a more or less random evaluation of marks on paper as votes or not.

**Count four, the system has broken down.** There are legions of people who believe that the system did not work. But the truth is that it did work. The system worked beautifully. Maybe it did not work for you. Your guy lost. My guy lost. But it worked. The election was unbelievably close and yet it was resolved and a new president has been sworn in. And not a shot was fired. No one even died in a bar fight over this. The country was equally divided in this election. The Presidency went to one man by just one Electoral College vote. The Senate is divided 50-50. And the transition is perfectly peaceful. The country is going on about its business.

The system works. The fact that we can have a case with a name like *George W. Bush, Governor of Texas v. Albert Gore, Jr., Vice President of the United States* is a sign that the system works, not a sign that it is broken.

**Is There, In the End, No Remedy?** Things did go wrong in this last election. Votes were not counted. Old equipment was used. More votes registered properly in richer predominantly white counties than in poorer predominantly minority counties. Forty-or-so Florida counties used optical scanners this last election. This newer, more expensive equipment causes fewer problems, leads to fewer errors. Because of its cost, it tends to be used in the richest counties. The irony is that "[t]he inventor of the Internet lost in part because his electoral base was in areas which used horse-and-buggy technology." Janadas Devan, *The Journey of a Ballot*, The Straits Times (Singapore), Dec. 17, 2000.

Things went wrong this last election. If there is no remedy, then I grant you that the system is not-
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BUSH v. GORE

working. But there is a remedy for these problems. It is just that the remedy was not one to be formulated in Bush v. Gore. There is prospective injunctive relief enjoining, say, the use of certain kinds of equipment. There is mandamus, ordering, say, the development of adequate recount standards. There are damages: civil rights actions against election officials. There is nothing like the threat of personal liability to get the attention of state and local officials. There are remedies. They are the traditional remedies in election cases. They look to future elections. This is how our system works. We see problems in one election and we get them fixed so they do not occur again in the next election. This time, we have seen a new problem. And if you read the papers, you have seen that lawsuits just like these have been filed. They were filed as early as January. Suits seeking damages and injunctions have been filed in Florida. The system works, and it is working as I write this.

The good news is that the system works. The bad news is that many people feel that their guy got screwed. In the long run—for our next 200 years—which is more important? I think if you called Dionne Warwick back today, she’d agree. In the geologic scale of time that we hope applies to the life of this country, the system works. The problems experienced in the last election will be remedied, and the system works.

2 Lucas v. Forty-fourth General Assembly, 377 U.S. 713, 736 (1964) refers to “...individuals constitutionally protected right to cast an equally weighted vote.” When a State provides that the votes of citizens in one part of the State should be given more weight than the votes of those in another part of the State, it dilutes the right to vote of those residing in the disfavored area. Reynolds v. Sims, 377 U.S. 533, 562 (1964). Likewise, when a State act result in dimples and pregnant chads being counted as votes at a recount table in one part of the room, but not counted at a table in another part, it dilutes the right to vote of those whose votes are being counted at the disfavored table.

3 This is just one more problem with this whole thing. Here I state that Bush’s statewide margin was 930 votes. In footnote 1, I say that it was 537 votes. That is because the 930 number (along with all of the numbers at this point in the text) is from a table on the New York Times web page, current as of December 7, 2000. The other number is from the Cox News Service, via the Omaha World-Herald, reported on January 27, 2001. Presumably the latter number is more recent and more accurate.


5 I have seen reports that anywhere from 39 to 43 Florida counties used optical scanners. The difference may be because: (1) There are different kinds of optical scanners: some alert voters when there appears to be a mistake on the ballot, allowing them to correct the mistake, and some don’t. (2) Some counties use them only in some precincts within the county. Karen Branch-Brisou, Lawmakers Are Trying to Update, How U.S. Votes, St. Louis Post Dispatch, Dec. 17, 2000 (39 of 67 counties use them, 23 with scanners in each precinct); Janadas Devan, The Journey of a Ballot, The Straits Times (Singapore), Dec. 17, 2000 (43 counties); Joe Crankshaw, Be Careful About Florida Election Reform, Port St. Lucie News (Stuart Fla.), Jan. 25, 2001 (41 counties).

6 Trying to Fix What is Broken, Salts. Legislation Target Voting Problems, Omaha World-Herald, Jan. 13, 2001; Voters to File Lawsuit to Bar Punch Cards, Omaha World-Herald, Jan. 10, 2001. (As I type this, on January 24, 2001, the morning Omaha World-Herald on page 4) reports that Florida’s county election supervisors have met and called on the legislature to adopt uniform, non-punch card voting technology statewide and to adopt uniform statewide standards for conducting recounts.

7 The one thing that troubles me about Bush v. Gore is that it is a case that turns on the right to have votes counted equally. This is the voters’ right, not George W. Bush’s right. How did Bush have standing? First, one could argue that the candidate also has a right to have the votes counted equally, and is injured by an unequal counting of the votes that deny him the election. Second, perhaps the answer is in the necessarily hurried nature of this case. I am not aware that the issue ever came up, that anyone thought about it. In any event, it would have been easy enough for the Bush team to find a voter who had standing and get that voter into the case as a plaintiff. A dismissal for lack of standing would have accomplished nothing more than to prolong the agony for a few hours.

1 Recall that the predictions going into the election were that George W. Bush was likely to win the popular vote and Albert Gore, Jr. was likely to win the electoral vote. As I proofread this article, the Omaha World-Herald reports that the Palm Beach Post’s Freedom of Information Act examination of the ballots in Palm Beach shows that had those dimples ballots “been counted as votes Al Gore would have picked up 682 votes, which is more than President Bush’s 537-vote statewide margin of victory!” Disputed-Ballot Analysis Gives Gore 682 Votes, Omaha World-Herald, Jan. 27, 2001, at 9. The Palm Beach Post, to the contrary, conducted its own recount in Miami-Dade County and found that Bush gained more votes than Gore. Clay Lambert & Bill Douthat, Miami-Dade Ballot Recount Likely Would Have Left Gore Sky, Palm Beach Post, Jan. 14, 2001, at 1A. But see also footnote 3, below.
reaching new customers and suppliers. Business firms are continuing to seek out the most effective way to capture these efficiencies, and that process has only begun.

Creighton University maintains a vital interest in the processes of developing Internet utilization and related technology. On one hand, we are one of the participants in the electronic marketplace, and we must grapple with finding effective means to utilize the Internet to meet practical needs associated with our educational mission. Among other things, the Internet provides new opportunities for communication with our students, alumni, and other communities that may be interested in our work.

On the other hand, the Internet also provides a laboratory for inquiry and learning, which feeds the quest for knowledge and understanding that is a critical component of our mission. As a phenomenon to be investigated and a frontier to explore, the Internet provides a significant context for developing new knowledge and sharing it with others. Our work in this context provides a basis, as stated in our Mission Statement, “to enhance teaching, to contribute to the betterment of society, and to discover knowledge. Faculty and staff stimulate critical and creative thinking and provide ethical perspectives for dealing with an increasingly complex world.” Our new combined degree program in law and e-commerce is an important step in this direction, as we seek to equip leaders with the tools to meet the organizational challenges and legal uncertainties presented by technological change.

A BRIEF LOOK AT INTERNET UTILIZATION IN THE SCHOOL OF LAW

The School of Law provides an example of institutional efforts to utilize the Internet and related technology in administrative and educational efforts. The law school’s web page (www.cutlaw.creighton.edu) provides an important initial contact point for information seekers. For prospective students, the web page often begins the process of inquiry about our law school, which leads to further personal contacts with faculty and staff. Information concerning course offerings, programs of study, professors, and facilities can be accessed conveniently from anywhere in the world. The day is soon coming when electronic applications will be the norm. The Internet has not displaced the importance of human interaction in the admissions process, but it meets basic information needs and provides a solid, welcoming atmosphere for those interested in learning more about us.

Related technology also allows prospective students to take a virtual tour of the law school. We have replaced a printed viewbook of information with CD-ROM technology, which provides access to the sights and sounds of the law school environment in an interactive format. As technological progress allows more efficient video transmission, an Internet-based program may soon replace these CDs, further reducing the costs associated with producing and mailing tangible media.

Current students and alumni also utilize the Internet for various functions, which were previously accessible (if at all) through paper sources. Alumni information is now regularly posted on the law school web site, and contacts with faculty and staff are only a click away. Students and alumni seeking job information may obtain a password allowing them to access job postings and other career services information, which is updated daily. The course registration process has also been streamlined through a web-based focus. Course offerings and academic requirements are now found entirely online, allowing more accurate and timely information for students without the associated costs of tangible media. On-line registration also allows students to use their time more effectively than standing in line waiting for course registration.

In addition to improving administrative efficiencies, the Internet has also affected educational processes. Legal research using the Internet has become an important tool for practitioners and students. Reliance upon electronic sources provides the most current information available, while also avoiding costly, repetitive tasks of updating paper sources. Course-based web pages also provide an additional link between students and their teacher, which helps to facilitate communication and learning. Web pages allow students to access assignments and course materials wherever they happen to be studying—after-hours in the library, at home, or out of town on a job interview. They also allow professors to post recent developments and to address student questions outside of class. Some web pages even allow students to engage in on-line discussion, thus building upon their classroom experience.

The School of Law has not adopted a model of distance learning through the Internet in lieu of classroom experience. However, we have taken strides toward greater utilization of technology in the classroom. For example, our new technology courtroom allows trial practice in a digital environment, with appropriate visual aids and video review technology to build and develop modern trial skills. Several classrooms have been renovated to allow Internet access and computer usage during class time.

Technology has not replaced direct human interaction and traditional analytical development as the basic focus in our learning environment. However, we hope that technology enhances that environment by

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enabling us to teach and communicate more effectively with our students and with our colleagues.

SYNTHESIS AND TRANSMISSION: THE COMBINED DEGREE PROGRAM IN LAW AND E-COMMERCE

In addition to being simply an administrative or educational tool, the Internet also provides an object for study and an environment for new learning. The opportunities presented by technological change do not often spring fully formed into practice; those opportunities must be discovered and realized over time. Moreover, technological changes present institutional challenges, as we seek to adapt our laws and behavior to new paradigms. These challenges can readily be seen in legal issues arising in the electronic marketplace, where participants struggle with issues such as these:

- How does one authenticate the identity and location of an electronic trading partner, who is represented only by electronic signals?
- Do market forces and technology provide adequate constraints on behavior that occurs in the virtual dimension of the Internet?
- Can the regulatory and taxing authority of government, which has traditionally been based on concepts of territorial sovereignty, extend to Internet activities? Should it?
- How can intellectual property rights be protected in a digital environment, when technology allows perfect reproduction at virtually no cost?

Does technology provide too much protection for intellectual property rights, thus cutting off the free flow of ideas that are vital to progress?

Do consumers have legally recognizable privacy interests in a digital environment? If so, how can such interests be protected? Should those interests be sacrificed for security?

How can we protect ourselves and our property from hackers, cybercriminals, and cyberterrorists?

Governments, consumers, businesses, and other institutions that are currently struggling to utilize the Internet must also wrestle with these and other questions presented by Internet technology. Some of these questions will be resolved through new legislation, while others will be resolved through translating existing concepts to new circumstances. Still others will be resolved by technology and private ordering to meet the needs of participants, perhaps at the expense of other social interests.

The electronic marketplace needs thoughtful people with a framework of knowledge and skills to address these issues and others that are yet to emerge. Creighton University has addressed this need through the nation's first Juris Doctor/ Master of Science in Electronic Commerce combined degree program. Through the coordinated efforts of the School of Law and the College of Business Administration, qualified students can now earn both the J.D. and M.S. degrees, which will equip them with knowledge and skills to function effectively in the dynamic world of e-commerce.

Students interested in the coordinated program must comply with the admission requirements for each separate degree program, which are independently determined by the School of Law and the College of Business. For example, law students interested in the Master of Science program must apply through the College of Business. (An application can be found at http://ecommerce.creighton.edu.) Admission is competitive, and successful applicants must have a baccalaureate degree demonstrating high scholastic ability, as well as acceptable GMAT or GRE scores. No particular technical background is required for admission, although students who enroll must satisfy certain foundational requirements in economics, programming, marketing, management, statistics, and college algebra in order to complete the degree. Some of these foundational requirements may be fulfilled through equivalent work experience.

The Master of Science degree requires 33 semester credit hours, including a significant e-commerce project. Courses are typically offered during evenings and Saturdays to accommodate lifelong learners who are interested in pursuing this degree while continuing other careers. Required courses in the Master of Science program are designed to develop an understanding of strategic business issues, as well as technical, management, and marketing skills relevant to the e-commerce environment.

Interdisciplinary elements include legal and ethical aspects of conducting electronic business, and law school courses
may be utilized to satisfy elective requirements for this degree. A new law course entitled “Legal Issues in E-Commerce”, was added to the curriculum for Fall 2000. Fifty-three students enrolled and completed this course, which is designed to acquaint students with emerging legal issues affecting business and consumer transactions that utilize the Internet.

Course topics include an introduction to the Internet and forms of e-commerce, contracting over the Internet, jurisdictional issues affecting judicial and regulatory power, torts in cyberspace, a survey of intellectual property issues, privacy, and taxation. Some of these topics could each subsume its own entire course, but the course by necessity takes a survey approach. Other law school courses, such as Computer Technology and the Law, also reflect the ubiquity of technological change affecting legal issues.

The Master of Science program is affiliated with the Joe Ricketts Center in Electronic Commerce and Database Marketing, which was founded by a generous gift from Creighton alumnus Joe Ricketts, CEO of Ameritrade Holding Corporation and an e-commerce pioneer. The Center’s partnership with several other businesses, such as ECOM Worldwide, First National Bank of Omaha, Call Interactive, OnMoney.com, Arthur Andersen, Oracle, Seagate Technologies, and SPSS, provides additional financial, software, and logistical support for the program. The involvement of local executives and experts has also provided an important additional resource for both students and faculty.

Law students who enroll in the Master of Science program can potentially complete both degrees in three years and two summers. Although the first year must be devoted solely to law school, up to twelve hours of course work from the College of Business can be applied toward satisfying the J.D. requirements, and up to six hours of law school courses can be applied toward the M.S. degree. This has proved to be an attractive opportunity for current students, and it has generated inquiries from prospective students interested in combining legal, technical, and business skills into their professional education. Currently, ten law students are enrolled in the combined degree program and a total of seventy-one students are enrolled in the Master of Science degree program through the College of Business Administration.

CHALLENGES OF THE ELECTRONIC FRONTIER

Lawyers, businesspersons, and policymakers have formidable obstacles to overcome in dealing with the changes that are occurring on the electronic frontier. In one sense, we are not exactly inexperienced at addressing these obstacles. After all, e-commerce may be considered to be as old as the telegraph; we have come a long way technologically since that point and we seem to be getting along just fine. However, the pace of change seems to be accelerating, not only in terms of technological output but also in terms of the legal and social constructs that address those technologies.

Merely keeping up with the technological content is itself a challenge; adapting our legal system to address the reality of business and consumer activity in the new technological environment presents another. There are significant choices ahead that will affect important values such as our privacy, our property, and our lifestyles, not to mention our economic wellbeing. We have the privilege of living in these interesting times and wrestling with these issues.
AWARDS

PATRICK J. BORCHERS, Dean and Professor of Law, received Creighton University's 2001 William F. Kelley, S.J. Achievement Award for Outstanding Academic Achievement for his work on the JD/Masters in E-Commerce Combined Degree Program.

BARBARA J. GASKINS ('76), Associate Dean and Assistant Professor of Law, received Creighton University's 2001 William F. Kelley, S.J. Achievement Award for Outstanding Academic Achievement for her work on the JD/Masters in E-Commerce Combined Degree Program. Dean Gaskins was also named a Fellow of the Nebraska State Bar Association.

ERIC PEARSON, Professor of Law, received Creighton University's 2001 William F. Kelley, S.J. Achievement Award for Outstanding Academic Achievement for his work on the JD/Masters in E-Commerce Combined Degree Program.

TRICIA BRUNO SHARRAR ('96), Assistant Dean, received Creighton University's William F. Kelley, S.J. Achievement Award for Outstanding Service Achievement for her work with Habitat for Humanity and the "House that Creighton Built 2000."

APPOINTMENTS

MARIAHNE B. CULHANE, Professor of Law, was elected to the Editorial Review Board of the American Bankruptcy Institute Law Review. She has served since August, 1999 as Chair of the University's Rank & Tenure Committee, and of the Law School's Administration & Finance Committee.

EDWARD A. MORSE, Professor of Law, served as Parliamentarian of the Iowa Republican Convention and was elected as one of 25 Iowa Delegates to the Republican National Convention in Philadelphia.

LAWRENCE RAFL, Professor of Law, is a member of the Iowa Model Rules Drafting Committee, appointed by the Iowa Supreme Court to revise Iowa’s rules of ethics.

ROLAND J. SANTONI, Professor of Law, serves as an arbitrator for the National Association of Securities Dealers and is a member of the board of directors of Transgenomic, Inc., a publicly held company in the life sciences industry.

RICHARD E. SHUGRUE, Professor of Law, was elected to the Board of Directors of the Nebraska Bar Foundation, and reelected to the boards of the American Judicature Society and the Literacy Center of the Midlands. He continues to serve in the Nebraska State Bar Association’s House of Delegates.

RONALD R. VOLKMER ('68), Professor of Law, has been accepted into membership of the American College of Trust and Estate Counsel (ACTEC) as an Academic Fellow. Fellows are selected on the basis of professional reputation and ability in the fields of trusts and estates, and for making substantial contributions to these fields through lecturing, writing, teaching, and bar activities. ACTEC is a professional organization of more than 2,700 outstanding trust and estate lawyers from the fifty states and the provinces of Canada. Among its purposes are the improvement and reform of probate, trust and tax laws, procedures and professional responsibility. He also was elected vice-president of the board of Community Mediation Center, a non-profit mediation center.

MICHAELA M. WHITE ('79), Professor of Law, serves on the Faculty Council of the University.

PUBLICATIONS

CATHERINE M. BROOKS, Professor of Law, published an article entitled "Plain Meaning, Plain Language, Plain English: A farewell to Hereby, Come Now, and To Whom" in The Nebraska Lawyer.

CRAIG DALLON, Assistant Professor of Law, published an article entitled "Understanding Judicial Review on Hospitals' Physician Credentialing and Peer Review Decisions" in the Temple Law Review.

NANCY LAWLER DICKHUTE ('84), Assistant Professor of Law and Director of the Legal Writing Program, writes a quarterly column for the Nebraska Lawyer entitled "The Writer's Block" which addresses common challenges the practitioner faces in writing clear, persuasive legal documents.

G. MICHAEL FENNER, Professor of Law, published an article entitled "The Former Use of Inadmissible Hearsay in Bankruptcy Court" in The American Bankruptcy Institute Law Review. He also authored the 2000 edition of Nebraska Jury Instructions 2d Civil, published by West Group.


ERIC PEARSON published an article entitled "Instruments as Easements as "Takeaways": Bornmann v. Board of Supervisors" in the Drake Law Review. This article was reprinted in 2000 Zoning and Planning Law Handbook, an annual West Publishing Company compendium of articles in the zoning and planning subject area.

RICHARD E. SHUGRUE published two articles entitled "Roscoe Pound, Commissioner" and "Supreme Court Justice Kennedy Visits Creighton Law School" in The Nebraska Lawyer. He also published an article entitled "Public Schools and the State Constitution" in the Nebraska Law Review. He also published a book review in Judicature.

LARRY L. TEPLY, Professor of Law, co-authored with Ralph L. Whitten the second edition of their treatise on Civil Procedure in the spring of 2000.
RONALD R. VORKMER ('68) published an article entitled “Low-Income Housing and The Charitable Exemption” in the Creighton Law Review and is working on legislation proposed in the article. He also writes a bi-monthly column in Trusts and Estates magazine entitled “Recent Fiduciary Decisions.”

RALPH U. WHITEN, Professor of Law, co-authored with Larry L. Tepl the second edition of their treatise on Civil Procedure in the spring of 2000. He also published an article entitled “Curing the Deficiencies of the Conflicts Revolution: A Proposal for National Legislation on Choice-of-Law, Jurisdiction, and Judgments” in the Willamette Law Review. He also authored, along with Professor Luther McDougall of Tulane and Professor Robert Felix of South Carolina, the 5th edition of American Conflicts Law, which is a treatise on Conflict of Laws and will be published by Transnational in Spring 2001.

PRESENTATIONS & TALKS
TERRY M. ANDERSON, Professor of Law, and MARIANNE B. CULHANE made presentations on Revised Article 9 of the Uniform Commercial Code in Lincoln in June 2000. Anderson also made a presentation on Revised Article 9 of the Uniform Commercial Code in Council Bluffs in November 2000.

PATRICK J. BORCHERS, delivered a paper on international jurisdiction at a University of Chicago Law School symposium in November 2000.

MARIANNE B. CULHANE addressed the Consumer Rights Litigation Conference in Denver, Colorado, in October 2000. The topic was “Enforcement of the Bankruptcy Discharge, Reaffirmation Practice, and Student Loans.” She and TERRY M. ANDERSON also made presentations on Revised Article 9 of the Uniform Commercial Code in Lincoln in June of 2000.

Culhane and MICHAELA M. WHITE ('79) presented a paper on debts that survive a bankruptcy discharge to the Comparative Consumer Bankruptcy Collaborative Research Network of the Law & Society Association in Miami, Fl in May 2000. Culhane presented a paper on sales of distressed debt at Practising Law Institute's Consumer Financial Services Litigation program in San Francisco in May, 2000. She also made presentations on consumer bankruptcy to the ABA Business Law Section in Columbus, Ohio, and to the National Consumer Law Center's meeting in Denver.

NANCY LAWLER DICKHUTE ('84) presented "The Negotiations Process: A Bridge Between Legal Writing and Legal Drafting" to the Legal Writing Institute at Seattle University School of Law in July 2000. The Legal Writing Institute is an educational organization of over 600 legal writing professionals.

G. MICHAEL FENNER gave a presentation at the office retreat of United States District Court Judges Joseph Bataillon ('74) and Robert Pratt ('72), focusing on the implications of Daubert and Kumho, two recent United Supreme Court cases on expert witnesses and how trial judges can best perform the gatekeeping function referenced in these cases.

LAWRENCE RAFUL gave one of the keynote speeches to over 500 in attendance at Heartland 3, a meeting of delegates from Jesuit colleges and universities of the Midwest, held every four years.

RICHARD E. SHUGRE presented continuing legal education programs to the Iowa Bar Association, the Nebraska Bar's Young Lawyer's Section, the Nebraska District and County Judges, and to the Corporate Counsel Section of the Nebraska State Bar Association. He also presented a Senior Skills Seminar on becoming a solo practitioner for Creighton Law students and alumni.

MICHAELA M. WHITE ('79) and Marianne B. Culhane presented a paper on debts that survive a bankruptcy discharge to the Comparative Consumer Bankruptcy Collaborative Research Network of the Law & Society Association in Miami, Fl in May 2000. Professor White also gave a lecture, “Bankruptcy and the State Courts” to the Appellate Judges Section of the American Bar Association in Asheville, North Carolina, last fall.


CAREER HIGHLIGHTS
G. MICHAEL FENNER co-taught a Supreme Court Seminar with United States Supreme Court Justice Clarence Thomas in February 2000.

J. PATRICK GREEN, Professor of Law, earned a Master of Sacred Theology, cum laude, from Nashota House in October 2000.

EDWARD A. MORSE was granted Tenure and was promoted to Professor of Law effective July 2000.

LAWRENCE RAFUL was inducted into Alpha Sigma Nu, the National Jesuit Honor Society.

ROLAND J. SANTONI received Creighton University School of Law's Outstanding Professor Award in May 2000.
CELEBRATE THE ALUMNI

CLASS OF 1950 REUNION

1954
HONORABLE JAMES M. MURPHY (Retired), of Plattsburg, Nebraska, was presented the George H. Turner Award by the Nebraska State Bar Association.

1968
RONALD R. VOLKMER, of Omaha, Nebraska, was elected Academic Fellow of the American College of Trust and Estate Counsel.

1971
JERRY M. SLUSKY, of Omaha, Nebraska, was named a Fellow of the Nebraska State Bar Foundation.

1972
HONORABLE GREGORY M. SCHATZ, of Omaha, Nebraska, was appointed Judge of the District Court for the Fourth Judicial District of Douglas County.

1976
PATRICK J. KELLY, of St. Paul, Minnesota, has been elected as Vice President of the Ramsey County Bar Association.

Patrick Kelly

CLASS OF 1960 REUNION

1962
LAWRENCE E. HARR, of Omaha, Nebraska, is a partner in the law firm of Lamson, Dugan, & Murray, LLP, and was named a Fellow of the Nebraska State Bar Foundation.

1964
HONORABLE MICHAEL MCGILL, of Omaha, Nebraska, retired from the judiciary and is now general counsel for the Girls and Boys Town in Omaha, Nebraska.

1977
HONORABLE PETER C. BATAILLON, of Omaha, Nebraska, was appointed District Court Judge for the Fourth Judicial District.

1967
JOHN P. MULLEN, of Omaha, Nebraska, has joined the law firm of Lefler & Mullen.

1977
BRENDA J. COUNCIL, of Omaha, Nebraska, was appointed by Governor Johanns to the Commission of Industrial Relations Board.

1972
JEFFREY B. FARNHAM, of Omaha, Nebraska, was named a Fellow of the Nebraska State Bar Foundation.

1978
MICHAEL D. MCKAY, of Seattle, Washington, was elected Vice-Chair of the Washington delegation to the GOP convention in Philadelphia.

1975
EUGENE L. HILLMAN, of Omaha, Nebraska, was re-appointed to the Disciplinary Review Board for Lawyers.

1979
DAVID M. WOODKE, of Omaha, Nebraska, was elected a Fellow in the International Society of Barristers.

1974
WARREN R. WHITTED, Jr., of Omaha, Nebraska, was named a Fellow of the Nebraska State Bar Foundation.

1980
WAYNE R. GOLD, of Columbia, Maryland, was appointed Regional Director of the National Labor Relations Board's Regional Office (Region 5), in Baltimore, Maryland.

1985
JOYCE A. DIXON, of Omaha, Nebraska, joined the law firm of Blackwell Sanders Peper Martin, LLP as a partner.
RICHARD B. MAHER, of Omaha, Nebraska, is a partner of the law firm of Marks Clare & Richards.

1978

MARK E. BELMONT, of Omaha, Nebraska, has been named Vice President and General Counsel of Kiewit Materials Company.

JOHN J. FITZGERALD, of Omaha, Nebraska, was appointed as Chief Operating Officer and elected to the Board of Directors of Editech, Inc.

VICTOR GUTMAN, of Omaha, Nebraska, received an award for community achievements in the Special Events and Festivals category by Downtown Omaha, Inc.

1979

JAMES E. HARRIS, of Omaha, Nebraska, has achieved Board Certification as a Civil Trial Advocate through the National Board of Trial Advocacy.

HONORABLE PATRICIA LAMBERTY, of Omaha, Nebraska, was named a Fellow of the Nebraska State Bar Foundation.

JAMES P. WALDRON, of Omaha, Nebraska, joined the law firm of Gross & Welch, PC, as a principal and director.

1980

CLASS OF 1980 REUNION

KARIYN E. KOBER, of Omaha, Nebraska, was named a Fellow of the Nebraska State Bar Foundation.

MICHAEL G. MULLIN, of Omaha, Nebraska was elected as President-elect of the Omaha Bar Association.

HONORABLE JAMES P. O'HARA, of Overland Park, Kansas, was named United States Magistrate Court Judge for the District of Kansas.

DONNA E. TAYLOR, of Neligh, Nebraska, was elected as one of the directors of the Nebraska County Attorneys Association.

1981

DANIEL A. MORRIS, of Omaha, Nebraska, was elected Treasurer-elect of the Omaha Bar Association.

1982

JUSTIN COOPER, of Omaha, Nebraska, joined the law firm of Marks Clare & Richards as an associate.

EARL G. GREEN, III, of Omaha, Nebraska, is a partner of the law firm Gaines Parsign & Hogan.

DANIEL HARRIS, Jr., of Omaha, Nebraska, was named a Fellow of the Nebraska State Bar Foundation.

RICHARD G. HENSEY, of Dupue, Illinois, is serving as a missionary at a university in Iringa, Tanzania for two years.

JOSEPH O. KAVAN, Jr., of Omaha, Nebraska, joined the law firm of Kutak Rock LLP.

CHRISTOPHER A. MCLEAN, of Washington, D.C., was nominated by President Clinton and confirmed by the U.S. Senate for the position of Administrator of the Rural Utilities Service for the U.S. Department of Agriculture.

1983

VIRGINIA G. KOERSELMAN, of Waterloo, Nebraska, has been retained by the National Association of Legal Assistants to strengthen continuing education programs and services.

HONORABLE JEFFREY L. MARCUZZO, of Omaha, Nebraska, was appointed Douglas County Court Judge for the Fourth Judicial District.

MARK J. SLOWIAZEK, of Denver, Colorado, is counsel with the Defense Contract Command Middle East.

1984

CAPTAIN PAUL L. PULLUM, of Omaha, Nebraska, has been promoted to the rank of Major in the Iowa Air National Guard.

JON S. SCHROEDER, of Curtis, Nebraska, was elected as one of the directors of the Nebraska County Attorneys Association.

1986

CHARLES E. POLK, Jr., of Creve Coeur, Missouri, served as a Senior Legal Advisor to Attorney General John Ashcroft throughout his confirmation process.

DANENE J. TUSHAR, of Omaha, Nebraska, is a shareholder and director of the law firm of Fraser Stryker Mensey Olson Boyer & Bloch, PC.

1987


HONORABLE DOUGLAS F. JOHNSON, of Omaha, Nebraska, was re-elected to the Board of Trustees of the National Council of Juvenile and Family Court Judges.

1988

BRIAN L. FERRELL, of Arlington, Virginia, received the John Marshall Award, the highest award bestowed upon attorneys within the Department of Justice.

GEOFFREY C. HALL, of Omaha, Nebraska, was elected as Vice Chairman of the Omaha Public Power District Board for 2001.

Creighton University School of Law
DR. CARL W. LUDVIGSEN, JR., of Indianapolis, Indiana, is employed as Senior Vice President of Operations with Covance Central Laboratory Services, Inc.

ROBERT P. CUNNINGHAM, of St. Cloud, Minnesota, is a shareholder in the law firm of Quinlivan & Hughes, PA.

ROBERT A. FINNEY, of South Sioux City, Nebraska, was elected as one of the directors of the Nebraska County Attorneys Association.

TIMOTHY T. GRAUMANN, of Omaha, Nebraska, has a position with Union Pacific Railroad.

PAUL J. HALBUR, of Omaha, Nebraska, is a shareholder and director in the law firm of Fraser Stryker Messey Olson Boyer & Bloch, P.C.

PETER C. LANGDON, of Omaha, Nebraska, joined the law firm of Kutak Rock LLP.

J. SCOTT SEARL, of Omaha, Nebraska, is general counsel for the Omaha World-Herald Company.

1989

1991

SCOTT A. LAUTENBAUGH, of Omaha, Nebraska, was elected President of the Barristers.

NICOLE NEESEN, of Omaha, Nebraska, is a part-time staff attorney in the Milton R. Abrahams Legal Clinic at Creighton University School of Law.

MARLIN A. POLK, of Omaha, Nebraska, was elected President and member of the Board of Directors of the Midlands Bar Association. He was also the recipient of the Creighton University School of Law Judge Elizabeth D. Pitman Award for 2001.

1992

SARA A. JUSTER, of Omaha, Nebraska, joined the law firm of Abrahams Kaslow & Cassman LLP.

MARY E. VANDENACK, of Omaha, Nebraska, is a principal in the law firm of Fitzgerald, Schorr, Barmettler & Brennan, P.C., ILO.

1993

MELANY S. CHESTERMAN, of Omaha, Nebraska, was elected as Secretary of the Omaha Bar Association.

MICHAEL J. KING, of Omaha, Nebraska, is a shareholder in the law firm of Koley Jessen P.C.

JAMES A. NAPIER, of West Des Moines, Iowa, joined the law firm of Brown, Winick, Graves, Gross, Baskerville, & Schoenebaum, P.C.

JOSEPH S. RISKO, of Omaha, Nebraska, joined the law firm of Young & White.

1994

ROBERTA L. CHRISTENSEN, of Omaha, Nebraska, is a shareholder in the law firm of Koley Jessen P.C.

H. DALE DIXON, III, of Omaha, Nebraska, is a partner of the law firm of Blackwell Sanders Peep Martin, LLP.

KENT E. ENDACOTT, of Lincoln, Nebraska, joined the law firm of Woods & Atken, LLP.

ANDREW J. HILGER, of Laguna Beach, California, joined the law firm of Borchard & Associates in Mission Viejo, California.

DENISE T. MYERS, of Cairo, Nebraska, is a partner of the law firm of Lauritsen, Brownell, Brostrom, Siehlis, Thayer & Myers in Grand Island, Nebraska.

JEANELLE R. ROBSON, of Lincoln, Nebraska, is a partner in the law firm of Knudsen, Berkheimer, Richardson & Endacott.

KIMBERLEY TAYLOR-RILEY, of Omaha, Nebraska, was elected Secretary and a member of the Board of Directors of the Midlands Bar Association.

1995

KELLY K. BRANDON, of Omaha, Nebraska, is associated with the law firm of Woodke, Oetepka & Gibbons, P.C.

KEITH A. GAUER, of Sioux Falls, South Dakota, is a partner with the law firm of Davenport, Evans, Hurwitz, & Smith, LLP.

ERIN E. MCCANDLESS, of Omaha, Nebraska, joined the law firm of Abrahams Kaslow & Cassman.

1996

TIMOTHY J. BUCKLEY, of Omaha, Nebraska, is assistant general counsel with Rosen Auto Leasing.

HEATHER ALBERTIE GARRETSON, of Kansas City, Missouri, is a Special Assistant United States Attorney in the Western District of Missouri.

1997

BRIAN R. LEAHY, of Santa Cruz, California, is Executive Director for California Certified Organic Farmers.
SHANE M. NIEBERGALL, of Omaha, Nebraska, joined the law firm of Zarley, McKee, Thomie, Voorhees, & Seese as an associate.

1998
KRISTINE A. DORN, of Omaha, Nebraska, joined First National Bank of Omaha.

CHRISTINA M. FINK, of Omaha, Nebraska, joined the law firm of McGill, Gotsdiner, Workman & Lepp, PC., LLP.

SEAN M. GILLEN, of Omaha, Nebraska, joined the law firm of Kutak Rock LLP as an associate.

2000
JUDE J. BELLER, of Omaha, Nebraska, joined the law firm of Blackwell Sanders Peper Martin, LLP in St. Louis as an associate.

MAREN C. CRAFT, of Omaha, Nebraska, joined the law firm of Baird, Holm, McClatchen, Pedersen, Hamann and Strasheim, LLP.

RICHARD D. DUNN, of Omaha, Nebraska, is an associate of the law firm of Gaines Pansing & Hogan.

KENDRA S. FENNESSY, of Omaha, Nebraska, is a judicial clerk for the Honorable Richard Sievers of the Nebraska Court of Appeals.

DR. ELIZABETH A. FURLONG, of Omaha, Nebraska, was the winner of the 2000 Elaine Osborne Jacobson Award for women working in Health Care Law given by the Roscoe Pound Institute.

SARA A. HANSEN, of Omaha, Nebraska, joined the law firm of Alexander & Associates.

MICHAEL W. MARTIN, of Omaha, Nebraska, joined the law firm of Martin & Martin, PC.

ANDREW C. MCELMEEL, of Omaha, Nebraska, joined the law firm of Stinson, Mag & Fizzell, PC. as an associate.

ERIK S. PETERSON, of Seal Beach, California, has a position with the Los Angeles County District Attorney’s Office in Long Beach, California.

KEITH J. REDLIN, of Omaha, Nebraska, joined the law firm of Kutak Rock LLP as an associate.

THOMAS T. ROUBIDOUX, of Omaha, Nebraska, joined the law firm of Kutak Rock LLP as an associate.

TERI L. VUKONICH, of Omaha, Nebraska, joined the law firm of Lamson, Dugan & Murray, LLP.

The Law School extends its deepest condolences to the families and friends of the following alumni:

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