

3 of 224 DOCUMENTS

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Fresno Bee (California)

July 9, 2010 Friday

SECTION: B; Pg. 4

LENGTH: 220 words

HEADLINE: EDITORIAL: Thumbs up, thumbs down

BODY:

Thumbs up to YMCA Camp Sequoia Lake for hosting 60 local children from Valley military families at Heroes Camp. The six-day summer camp was for children of actively enlisted military families who are in grades 3 through 12. The Golden State YMCA and its Camp Sequoia branch partnered with the Armed Services YMCA to provide the camp for \$10 per child.

Thumbs up to Clovis East High School grad Chris Colfer , who was nomi-nated for an Emmy for his performance as Kurt Hummel on the Fox television series "Glee." He is the first actor from the Valley to get an Emmy nomination as a TV series regular since Mike Connors of Fresno was nominated for three as the star of "Mannix."

Thumbs up to Jerry Hartman for establishing the Barbara McDowell Pro Bono Legal Initiative at the Washington, D.C., firm of Drinker, Biddle & Reath. Hartman was McDowell's husband. She died in January 2009 from brain cancer at age 56. McDowell, a 1969 graduate of Fresno's Hoover High School, scaled the heights of the legal profession and then began representing the indigent. The initiative in her memory is an ambitious legal aid program. After McDowell died, Hartman contemplated how to give meaning to the memory of his late wife.

If you have suggestions for a Thumbs up, thumbs down, e-mail it to Lisa Maria Boyles at lboyles@fresnobee.com .

LOAD-DATE: July 10, 2010

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Fresno Bee (California)

July 9, 2010 Friday
FINAL EDITION

SECTION: LOCAL NEWS; Pg. A4

LENGTH: 549 words

HEADLINE: Legal aid program honors late Fresnan

BYLINE: Michael Doyle Bee Washington Bureau

DATELINE: WASHINGTON

BODY:

The late Barbara McDowell has inspired an ambitious legal aid program that fits her virtues to a T.

A 1969 graduate of Fresno's Hoover High School, McDowell scaled the heights of the legal profession and then recalibrated her ambitions to represent the indigent. Now, in her name, more attorneys might do the same.

"Her true love was helping people," said Barbara's mother, Joyce McDowell, who still lives in Fresno. "That is what she did."

Following Barbara McDowell's death from brain cancer in January 2009 at age 56, her husband, Jerry Hartman, established the Barbara McDowell Pro Bono Legal Initiative at his firm of Drinker, Biddle & Reath. The initiative, which is being coordinated out of the firm's Washington, D.C., office, rallies Drinker, Biddle's attorneys at several of the firm's offices to target systemic legal problems.

A lawsuit filed in May as part of the pro bono initiative challenges Mississippi's death penalty sentencing procedures. The clients are complicated, to say the least. One, Michelle Byrom, ate rat poison for three years and then paid a gunman \$15,000 to kill her abusive husband, a jury found.

But Byrom's initial attorneys were also fatally ineffective, according to the pro bono lawsuit; they failed, for instance, to challenge the admissibility of statements Byrom made while heavily medicated.

"This process in Mississippi is not working," Hartman said. "The lawyers are overworked, and they're really having a tough time representing all of these death row inmates."

Discussions are also under way centering on potential legal challenges to predatory payday loan operations and reforming the District of Columbia's food stamp procedures. Last month, the pro bono campaign earned Hartman an annual "legal champion" award from the National Law Journal.

"It's doing a lot more good even than Barbara was able to do," Joyce McDowell said.

Barbara McDowell attended California State University, Fresno, for two years after graduating from Hoover, and then attended Yale Law School.

For the big law firm Jones Day, McDowell represented corporate clients like R.J. Reynolds Tobacco Co. and the aerospace giant Northrop Grumman. Their pockets were deep.

McDowell took a pay cut in 1997 to join the U.S. solicitor general's office, where she represented the United States government in 18 oral arguments before the Supreme Court. She then took another pay cut in 2004 to become the appellate advocacy director for the Legal Aid Society of the District of Columbia.

After McDowell died, Hartman contemplated how to give meaning to the memory of his late wife.

"The only thing that made sense to me was to pick up and continue a lot of what Barbara did," Hartman said.

Some friends already had contributed in Barbara McDowell's name to the Fresno County library. An endowment collected nearly \$200,000 for the D.C. Legal Aid Society's new appellate advocacy director. A Barbara McDowell Scholarship helps a low-income Washington, D.C., high school graduate.

Finally, Hartman settled on establishing the pro bono initiative. So far, 20 attorneys have devoted an estimated 2,000 work-hours to the program.

"We want to do what we think honors Barbara best," said Drinker, Biddle & Reath attorney Maureen Hardwick.

The reporter can be reached at mdoyle@mcclatchydc.com or (202) 383-0006.

LOAD-DATE: July 11, 2010

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July 8, 2010 Thursday

LENGTH: 638 words

HEADLINE: Late Fresno native inspires pro bono legal program

BYLINE: Michael Doyle; McClatchy Newspapers

BODY:

WASHINGTON -- The late Barbara McDowell has inspired an ambitious legal aid program that fits her virtues to a T.

A 1969 graduate of Fresno's Hoover High School, McDowell scaled the heights of the legal profession and then recalibrated her ambitions to represent the indigent. Now, in her name, more attorneys might do the same.

"Her true love was helping people," said Barbara's mother, Joyce McDowell, who still lives in Fresno. "That is what she did."

Following Barbara McDowell's death from brain cancer in January 2009 at age 56, her husband, Jerry Hartman, established the Barbara McDowell Pro Bono Legal Initiative. The initiative rallies attorneys at Hartman's firm of Drinker, Biddle & Reath, targeting systemic legal problems.

A lawsuit filed in May as part of the pro bono initiative challenges Mississippi's death penalty sentencing procedures. The clients are complicated, to say the least. One, Michelle Byrom, ate rat poison for three years and then paid a gunman \$15,000 to kill her abusive husband, a jury found.

But Byrom's initial attorneys were also fatally ineffective, according to the pro bono lawsuit; they failed, for instance, to challenge the admissibility of statements Byrom made while heavily medicated.

Another one of the 16 original clients, 72-year-old Gerald Holland, was executed shortly after the lawsuit was filed. A jury had convicted Holland in 1987 of raping and murdering a 15-year-old girl. The lawsuit contends Holland's previous attorney failed to summon expert witnesses or to adequately challenge the prosecution's witnesses. The lawsuit asserts the failings are inherent in the understaffed Mississippi office that handles post-conviction death penalty cases.

"This process in Mississippi is not working," Hartman said. "The lawyers are overworked, and they're really having a tough time representing all of these death row inmates."

Discussions are also underway centering on potential legal challenges to predatory payday loan operations and reforming the District of Columbia's food stamp procedures. Last month, the pro bono campaign earned Hartman an annual "legal champion" award from the National Law Journal.

"It's doing a lot more good even than Barbara was able to do," Joyce McDowell said.

Joyce McDowell is now 86. She says she still cries frequently, thinking of her late daughter. But she laughs, too, as she recalls her daughter's legal career.

Barbara McDowell attended Fresno State University for two years after graduating from Hoover, and then attended Yale Law School.

For the big law firm Jones Day, McDowell represented corporate clients like R.J. Reynolds Tobacco Co. and the aerospace giant Northrop Grumman. Their pockets were deep.

McDowell took a pay cut in 1997 to join the U.S. solicitor general's office, where she represented the United States government in 18 oral arguments before the Supreme Court. She then took another pay cut in 2004, to become the appellate advocacy director for the Legal Aid Society of the District of Columbia.

After McDowell died, Hartman contemplated how to give meaning to the memory of his late wife.

"The only thing that made sense to me was to pick up and continue a lot of what Barbara did," Hartman said.

Some friends already had contributed in Barbara McDowell's name to the Fresno County library. An endowment collected nearly \$200,000 for the D.C. Legal Aid Society's new appellate advocacy director. A Barbara McDowell Scholarship helps a low-income D.C. high school graduate.

Finally, Hartman settled on establishing the pro bono initiative. So far, 20 attorneys have devoted an estimated 2,000 work-hours to the program, and an additional 40 attorneys have likewise volunteered to help in the future.

"We want to do what we think honors Barbara best," said Drinker, Biddle & Reath attorney Maureen Hardwick.

McClatchy Newspapers 2010

LOAD-DATE: July 8, 2010

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Fresno Bee (California)

April 18, 2009 Saturday
FINAL EDITION

SECTION: LOCAL NEWS; Pg. B5

LENGTH: 503 words

HEADLINE: Fight for social justice kept alive;
Pro bono legal work honors former Fresno woman after her death.

BYLINE: Michael Doyle Bee Washington Bureau

DATELINE: WASHINGTON

BODY:

The late Barbara McDowell went from the San Joaquin Valley to the legal summit and into the hearts of those who knew her.

Now, the former Fresno resident who passed away in January is being honored.

A new national pro bono campaign established in McDowell's name will be sustaining her commitment to using the law as a tool of social justice.

"From the time she was a Girl Scout, doing things for the poor, she was helping people," said her mother, Joyce McDowell, who lives in Fresno. "Her whole ambition was helping people, so she would care deeply about this."

The Barbara McDowell Pro Bono Initiative unveiled this week by Drinker, Biddle & Reath will give the Philadelphia-based firm's lawyers time and credit for doing unpaid legal work. Echoing McDowell's own practice, the pro bono attorneys will seek cases of more than singular significance.

As appellate advocacy director at the Legal Aid Society of the District of Columbia, for instance, McDowell had represented poor clients threatened with eviction. Her goal was to protect not only the individual client but others finding themselves in similar situations.

The new pro bono initiative will do the same.

"We will be finding cases that have precedential value, that will change many people's lives," said Drinker Biddle partner Jerry Hartman, McDowell's husband, who will head the initiative.

After attending Fresno State for two years, McDowell transferred to George Washington University. She graduated from Yale Law School.

Representing the U.S. government, McDowell argued 18 cases before the U.S. Supreme Court. Some happened to be acutely relevant for the San Joaquin Valley, as when she defended an agricultural promotion program.

McDowell served in the Solicitor General's Office from 1997 to 2004, when she left to establish the Legal Aid Society's appellate program.

McDowell might have instead cashed in her high-level government experience at a blue-chip law firm.

Of course, McDowell acknowledged at the time, Hartman's own successful corporate law practice made it easier for her to start representing the poor.

Diagnosed with brain cancer in late 2007, McDowell continued working at the Legal Aid Society for as long as she could. Finally, her mother said, McDowell realized around Thanksgiving 2008 that it was time to step down.

"She was fighting so hard," said Joyce McDowell, who is 85.

Barbara McDowell funded a social justice program at her church. She also left money to endow the appellate advocacy position she formerly held at the Legal Aid Society.

The new pro bono initiative, though, came together only after her passing.

Hartman said he and other Drinker Biddle attorneys are now casting a net for "five strong cases" to kick off the program.

Participating attorneys will be freed up to work on them -- anything from death-penalty challenges to immigration and housing.

"We'll be looking for a resolution," Hartman said, "that will be to the advantage of the underprivileged."

The reporter can be reached at mdoyle@mcclatchydc.com or (202) 383-0006.

GRAPHIC: The late Barbara McDowell left a high-power post to fight for poor clients.
SPECIAL TO THE BEE

LOAD-DATE: April 20, 2009

Washington Business Journal (Washington DC)

April 16, 2009 Thursday

LENGTH: 221 words

HEADLINE: Drinker Biddle & Reath launches pro bono initiative

BYLINE: Tierney Plumb

BODY:

Drinker Biddle & Reath LLP has launched a pro bono initiative that continues the social justice work of the late wife of Jerry Hartman, a D.C. partner.

During the final four years of her life, she created and directed the appellate project at the D.C. Legal Aid Society where she represented the poor in areas of housing, public benefits and domestic violence. She also worked with such local businesses and organizations as Shaw Community Ministry and Westmoreland Congregational United Church of Christ in Bethesda.

The Barbara McDowell Pro Bono Initiative "will enhance the economic, health, social condition and civil liberties of low income and disadvantaged people through litigation, legislative and administrative rule-making engagements across a broad range of subject matters, including low-income housing, political asylum, domestic violence, human trafficking, children's rights, immigration and disparities in community services, and opportunities for economic development," said Hartman, who will direct the initiative.

She was also a partner at Jones Day and then served as an assistant to the Solicitor General in the Department of Justice from 1997 to 2004.

The Legal Aid Society named its appellate advocacy program after McDowell, who died of brain cancer in January, and formed a supporting endowment in her name.

LOAD-DATE: April 16, 2009

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January 8, 2009 Thursday

SECTION: WASHINGTON DATELINE

ACC-NO: 20090108-BC-MCDOWELL-APPRECIATION

LENGTH: 872 words

HEADLINE: From Supreme Court to eviction cases, top lawyer had last word

BYLINE: By Michael Doyle, McClatchy Newspapers

DATELINE: WASHINGTON

BODY:

WASHINGTON _ Few lawyers are good enough to argue before the U.S. Supreme Court. The late Barbara McDowell did it twice in one day.

As one of the elite cadre of lawyers in the U.S. solicitor general's office, McDowell argued 18 cases before the Supreme Court. The numbers _ two cases in a day, 18 overall _ represent, but cannot capture, McDowell's sterling reputation.

"Barb had an amazingly sharp, analytical mind," recalled University of Pennsylvania law professor Sarah Barringer Gordon. "Barb was a superb editor and writer, partly from her years working as a journalist, and partly because she loved the give and take of really fine persuasive writing and argument."

On Friday, 14 months after she was diagnosed with brain cancer, McDowell died at her northern Virginia home. She was 56. Now, preparing for a Saturday memorial service to be held in suburban Maryland, McDowell's friends must juggle grief and celebration.

They cite numbers, such as the roughly 50 cases McDowell argued in recent years as appellate advocacy director for the Legal Aid Society of the District of Columbia. They recall choices, such as McDowell's mid-life decision to represent the poor instead of the powerful. They summon memories, painful and sweet.

"She worked harder than anyone else," said Gordon, who first met McDowell in the mid-1980s at Yale Law School, and "she was very funny, often with a wickedly observant sense of humor that delighted us all."

Another friend, now a prominent Supreme Court practitioner, recalled how McDowell always "completely mastered the law and the facts of the case she was arguing." However, this former colleague from the solicitor general's office also asked not to be named, saying it was "just too sad for me" to be talking on the record.

Born in Oakland, Calif., McDowell was raised in Fresno, Calif., where her mother, Joyce, still lives. McDowell embraced politics early, helping run the 1972 Fresno County campaign for Democratic presidential nominee George McGovern. Pointed toward government, she transferred from Fresno State to George Washington University in Washington.

"I was one of the few people who'd cut class to go to a (Fresno County) Board of Supervisors meeting," McDowell once said of her high school career.

McDowell steered her career in a way that others wouldn't.

She worked as an editor for several years after college, before entering Yale Law School. She went into private practice, but then took a pay cut to join the solicitor general's office in 1997. She took another pay cut to join the legal aid society in 2004.

"I could be making maybe 10 times what I make here," McDowell said last year, gesturing around her spare downtown Washington office.

McDowell added that husband Jerry Hartman's own successful legal practice made her own virtuous career choice easier. Both were divorced when they married eight years ago. The couple had no children.

McDowell's legal aid clients could be trying, her courtroom victories poignant. In 2006, for instance, McDowell and her colleague Julie Becker prevailed in a case that kept District of Columbia resident Raesheeda Ball from being evicted after someone else's guns and drugs were found in her apartment.

McDowell likewise helped keep D.C. tenant Evelyn Douglas, who lived on \$531 a month, from being evicted from an apartment she had difficulty maintaining because of her mental illness.

Such advocacy can be more art than science. However, it's still science. The two Supreme Court cases successfully argued by McDowell on Dec. 5, 2001, for instance, were painfully technical telecommunications controversies.

"The federal district courts have subject matter jurisdiction over cases contending that a state public utility commission has construed and enforced an interconnection agreement in a manner contrary to federal law," McDowell declared at the start of one case, the transcript shows. "That's true whether one looks specifically at section 252(e)(6) of the 1996 act, or more generally."

Then, inevitably, a justice interrupted with a question. These constant questions during oral arguments underscore the need for intense preparation, deft footwork and an ability to handle the bizarrely hypothetical.

"I mean, suppose I am a member of the People for the Ethical Treatment of Mushrooms," Justice Antonin Scalia mused during another 2001 court case. "And I think that mushrooms should not be eaten at all. Can I be compelled to take part in this advertising?"

"Well, then," McDowell replied, "presumably you wouldn't be a mushroom producer and you wouldn't be covered by this statute."

"Oh no," said Scalia, who generally likes to have the last word. "I produce them to make them happy. I just don't harvest them."

Unhesitatingly, McDowell countered Scalia's question. She started to elaborate, and then faced the next question, and one after that, and yet another, until her job was done.

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LOAD-DATE: January 9, 2009

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Fresno Bee (California)

January 6, 2009 Tuesday
FINAL EDITION

SECTION: MAIN NEWS; Pg. A1

LENGTH: 770 words

HEADLINE: Hoover High grad remembered as dedicated, brilliant lawyer

BYLINE: Michael Doyle Bee Washington Bureau

DATELINE: WASHINGTON

BODY:

Few lawyers are good enough to argue before the U.S. Supreme Court. The late Barbara McDowell, a 1969 graduate of Fresno's Hoover High School, did it twice in one day.

As one of the elite cadre of lawyers in the U.S. Solicitor General's Office, McDowell argued 18 cases before the Supreme Court.

The numbers -- two cases in a day, 18 overall -- are proxies. They represent, but cannot capture, McDowell's sterling reputation.

"Barb had an amazingly sharp, analytical mind," recalled University of Pennsylvania law professor Sarah Barringer Gordon. "Barb was a superb editor and writer, partly from her years working as a journalist, and

partly because she loved the give and take of really fine persuasive writing and argument."

On Friday, 14 months after she was diagnosed with brain cancer, McDowell died in her northern Virginia home. She was 56. Now, preparing for a Saturday memorial service to be held in suburban Maryland, McDowell's friends must juggle grief with celebration.

They cite numbers, like the roughly 50 cases McDowell argued in recent years as appellate advocacy director for the Legal Aid Society of the District of Columbia. They recall choices, like McDowell's midlife decision to represent the poor instead of the powerful. They summon memories, painful and sweet.

"She worked harder than anyone else," said Gordon, who first met McDowell in the mid-1980s at Yale Law School, and "she was very funny, often with a wickedly observant sense of humor that delighted us all."

McDowell was born in Oakland and raised in Fresno, where her mother, Joyce, still lives. McDowell embraced politics early, helping run the 1972 Fresno County campaign for Democratic presidential nominee George McGovern while in college. Pointed toward government, she transferred from California State University, Fresno, to George Washington University in Washington.

"I was one of the few people who'd cut class to go to a [Fresno County] Board of Supervisors meeting," McDowell once said of her high school career.

McDowell worked as an editor for several years after college before entering Yale Law School. She went into lucrative private practice, but then took a pay cut to join the Solicitor General's Office in 1997. The solicitor general is a presidential appointee whose office -- filled mostly with career professionals outside the patronage realm -- is both a gatekeeper and an advocate. It determines which cases to appeal when the government loses and speaks for the federal government before the Supreme Court.

McDowell took another pay cut to join the legal aid society in 2004.

"I could be making maybe 10 times what I make here," McDowell said last year, gesturing around her spare downtown Washington office.

McDowell added that husband Jerry Hartman's successful legal practice made her own career choice easier. Both were divorced when they married eight years ago; the couple had no children.

As a legal-aid lawyer, McDowell advocated for people who lived in the District of Columbia. In 2006, for instance, McDowell and colleague Julie Becker prevailed in a case that kept Raesheeda Ball from being evicted after someone else's guns and drugs were found in her apartment.

McDowell likewise helped keep D.C. tenant Evelyn Douglas, who survived on \$531 a month, from being evicted from an apartment she had difficulty maintaining because of her mental illness.

Those cases were down-to-earth compared with much of her work before the Supreme Court. The two cases successfully argued by McDowell on Dec. 5, 2001, for instance, were painfully technical telecommunications controversies.

Constant questions during oral arguments before the Supreme Court underscore the need for intense preparation, deft footwork and an ability to handle the bizarrely hypothetical.

"I mean, suppose I am a member of the People for the Ethical Treatment of Mushrooms," Justice Antonin Scalia mused during another 2001 court case when McDowell defended the ability of farm groups to compel payment of assessments to fund industry advertising. "And I think that mushrooms should not be eaten at all. Can I be compelled to take part in this advertising?"

"Well, then," McDowell replied, "presumably you wouldn't be a mushroom producer and you wouldn't be covered by this statute."

"Oh no," said Scalia, who generally likes the last word. "I produce them to make them happy. I just don't harvest them."

Unhesitatingly, McDowell countered Scalia's question. She started to elaborate, and then faced the next question, and one after that, and yet another, until her job was done.

The reporter can be reached at mdoyle@mcclatchydc.com or (202) 383-0006.

GRAPHIC: Barbara McDowell

LOAD-DATE: January 6, 2009

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The Washington Post

January 4, 2009 Sunday
Regional Edition

SECTION: METRO; Pg. C07

DISTRIBUTION: Maryland

LENGTH: 396 words

HEADLINE: Barbara McDowell; Leader In Public Interest Advocacy

BODY:

Barbara McDowell, 56, a lawyer who argued many cases before the U.S. Supreme Court and who later became a national leader in public interest advocacy as director of the appellate project of the D.C. Legal Aid Society, died Jan. 2 of brain cancer at her home in Falls Church.

From 1997 to 2004, Ms. McDowell was an assistant to the solicitor general in the Justice Department. She argued 18 cases before the Supreme Court, including two in one day, and was the principal author of the legal briefs in more than a dozen other cases.

She once won a Supreme Court case against Chief Justice John G. Roberts Jr., then in private practice, that resulted in improved retirement benefits for coal miners.

In 2004, Ms. McDowell joined the D.C. Legal Aid Society and established its Appellate Advocacy Project. She argued about 50 cases related to issues of poverty law in the D.C. Court of Appeals and won significant legal victories involving housing, public benefits, domestic violence and the rights of the poor.

The Legal Aid Society has named its appellate advocacy program in Ms. McDowell's honor and has established an endowment in her name.

In March, Roberts presented Ms. McDowell with the Rex E. Lee Advocacy and Public Service Award, a national honor recognizing the outstanding appellate advocate of the year.

Barbara Bea McDowell was born in Oakland, Calif., and grew up in Fresno, Calif. After graduating from George Washington University in 1974 with a bachelor's degree in journalism, she spent several years in New York as an editor with United Feature Syndicate.

She graduated from Yale Law School in 1985 and worked as a clerk for Supreme Court Justice Byron R. White. From 1987 to 1997, she was a partner in the Washington office of the Jones Day law firm, representing such clients as the Northrop Grumman and the R.J. Reynolds Tobacco.

Ms. McDowell chaired the board of directors of the Shaw Community Ministry, which provides social services in the District's Shaw neighborhood. She also served on the board of trustees of Westmoreland Congregational United Church of Christ in Bethesda.

She enjoyed running, bicycling and swimming and was a Washington Nationals season ticket holder.

Her marriage to Robert Peck ended in divorce.

Survivors include her husband of eight years, Jerry Hartman of Falls Church; her mother, Joyce McDowell of Fresno; and a brother.

-- Matt Schudel

GRAPHIC: IMAGE; Family Photo; Lawyer Barbara McDowell, 56, directed the appellate project of the D.C. Legal Aid Society.

LOAD-DATE: January 4, 2009

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Fresno Bee (California)

March 3, 2008 Monday
FINAL EDITION

SECTION: LOCAL NEWS; Pg. B1

LENGTH: 734 words

HEADLINE: Hoover grad to receive honor;
National society to commend lawyer for her Legal Aid work.

BYLINE: Michael Doyle Bee Washington Bureau

DATELINE: WASHINGTON

BODY:

Fresno native Barbara McDowell is one lawyer who followed her heart. For that, she has won fresh acclaim.

This week, a nationwide law society will honor the 1969 Hoover High School graduate and former top government attorney for her legal aid service. McDowell now represents the poorest residents of Washington, D.C., a midlife career choice that might baffle some of her peers.

"I could be making maybe 10 times what I make here," McDowell said in her sparsely decorated downtown Washington office.

McDowell is the appellate advocacy director for the Legal Aid Society of the District of Columbia. She's immersed in tenant disputes, domestic violence and disrupted families, the flesh-and-blood woes periodically swept aside by inattentive courts.

The often-thankless work earned McDowell the annual Rex Lee Advocacy Award from the J. Reuben Clark Law Society, being presented Wednesday. The legal society emphasizes public service and "the strength brought to the law by a lawyer's personal religious conviction."

The award will be presented by the dean of Brigham Young University's law school, and the law society is closely associated with the Mormon church, but the award is not religiously oriented.

"Her fellow appellate advocates ... thought her work over the years demonstrated the kind of principled and

excellent advocacy the award is designed to promote," said Washington-based attorney Douglas Bush, a member of the legal society's board.

In private practice, McDowell once represented deep-pocketed clients like R.J. Reynolds Tobacco Co. and aerospace firm Northrop Grumman. In her government service, she represented big agencies like the Agriculture Department.

Now she represents clients like Evelyn Douglas, who gets by on disability payments of about \$531 a month.

Douglas' landlord wanted to evict her for littering her D.C. apartment with debris, rotting food and urine-filled bottles, court records show. Douglas said she needed more time to get city help with cleaning. The trial judge disagreed, and ruled Douglas could not argue she was discriminated against.

McDowell then took over the appeal and won in a case that could protect other tenants as well.

"The tenant requested a reasonable accommodation for mental illness," the D.C. Circuit Court of Appeals ruled in 2005. "That request was clear enough to impose a legal duty on the landlord to respond."

Now 55, McDowell joined the Legal Aid Society in early 2004 after about seven years with the Solicitor General's Office.

The Solicitor General's Office represents the administration, and it has an outsize influence with the Supreme Court. Eighteen times, McDowell presented the government's oral arguments before the high court. She says she doesn't know her exact win-loss record, but it was pretty good.

For instance, when San Joaquin Valley fruit grower Dan Gerawan filed a First Amendment challenge to the federal marketing order that compels farmers to pay fees for advertising, McDowell defended the program.

She prevailed, by a 5-4 opinion issued in 1997.

"I loved the job," McDowell said.

"There's nothing quite like standing up and saying, 'I represent the United States.' "

Solicitor general's service can also translate to serious money.

Supreme Court Chief Justice John Roberts Jr., for instance, served as deputy solicitor general before entering private practice.

The year before joining the federal bench, in 2004, Roberts reported earning \$1 million.

The Legal Aid Society, with 23 staffers at the time, reported spending a grand total of only \$2.5 million in fiscal year 2006.

McDowell might have scored big by returning to her old law firm of Jones Day when she left the government. She said she felt "really driven," though, to build a new appellate program that shaped the law affecting poor people.

In exchange, she took a pay cut from her government salary, and forfeited the potential perks of a law firm partnership. It's seemingly a habit with her. McDowell likewise took a pay cut to leave Jones Day for the Solicitor General's Office in the 1990s. An honest advocate, she noted that her husband, Gerald Hartman, already makes an ample living as a successful lawyer. Still, she cautions that doing the right thing can be costly.

"It was quite an adjustment," McDowell said of her move. "We're dealing with people who have lived very difficult lives."

The reporter can be reached at mdoyle@mcclatchydc.com or (202) 383-0006.

GRAPHIC: Barbara McDowell

LOAD-DATE: March 3, 2008

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The Washington Post

April 10, 2007 Tuesday
Met 2 Edition

SECTION: METRO; Pg. B01

DISTRIBUTION: DC

LENGTH: 723 words

HEADLINE: D.C. Asks Full Court To Study Gun Law;
Appeals Panel Had Ruled Against Ban, Angering Officials

BYLINE: Henri E. Cauvin; Washington Post Staff Writer

BODY:

Attorneys for the District sought yesterday to preserve the city's gun-control law, asking a federal appeals court to reconsider a recent decision that called some restrictions unconstitutional.

The District urged the full appeals court to review the ruling made last month by a three-judge panel. The 2 to 1 decision declared that the Second Amendment grants a person the right to possess firearms and struck down a part of the D.C. law that bars people from keeping handguns in homes.

Mayor Adrian M. Fenty (D) vowed to fight the decision, and yesterday he was at the courthouse for the filing of a petition seeking a full review by the U.S. Court of Appeals for the D.C. Circuit.

Flanked by Attorney General Linda Singer, Police Chief Cathy L. Lanier and council members Phil Mendelson (D-At Large) and Marion Barry (D-Ward 8), Fenty said the District cannot afford to accept a ruling that would increase the number of guns in the city.

"More guns quite simply leads to more violence," Fenty said.

In seeking another layer of review, the District argued that the case deals with "questions of exceptional importance" and noted that the decision creates conflicts in federal case law that must be resolved.

For decades, the District has had one of the most restrictive gun laws in the country, prohibiting private citizens from owning handguns and limiting ownership and use of rifles and shotguns. The gun law remains in effect while legal proceedings continue.

The restrictions have drawn the ire of libertarians, gun enthusiasts and others, and this is not the first time the law has come under attack.

But with a decades-old Supreme Court ruling and appellate rulings seemingly in the District's favor, the restrictions did not appear to be vulnerable to a Second Amendment claim -- until last month.

In an opinion written by Senior Judge Laurence H. Silberman and joined by Judge Thomas B. Griffith, the court found that the ban on keeping handguns in homes violates the Second Amendment, which states that a "well regulated militia, being necessary to the security of a free state, the right of the people to keep and bear arms, shall not be infringed."

The ruling also struck down a section of the D.C. law that requires owners of registered guns, including shotguns, to disassemble them or use trigger locks.

Judge Karen LeCraft Henderson, who, like Silberman and Griffith, was appointed by a Republican president, dissented.

The District could have appealed directly to the Supreme Court, and the case might wind up there.

But Singer said the city's interests would be served by allowing the full appeals court to hear the case. "We want to give them a chance to look at this first," she said.

Barbara McDowell, who is an appeals attorney for the Legal Aid Society of the District of Columbia and was a lawyer for the U.S. solicitor general for several years, said the District might view the appeals court as more receptive than the Supreme Court. Even so, forecasting how a court will rule in a case like this is tricky, she said. "I think it's really hard to predict how judges will come out on an unsettled area of the law, such as the Second Amendment," she said.

And, McDowell said, a judge's interpretation of the Second Amendment might not necessarily line up with what are believed to be his or her traditional political leanings. A narrow reading of the Second Amendment might be considered legally conservative but politically liberal, McDowell said. "So knowing whether somebody is conservative or liberal may not tell us much about how this case is going to come out," she said.

Alan Gura, who represented the plaintiffs in the suit challenging the gun law, said that although he does not think the full court needs to hear the case, he would not be surprised if it chooses to do so.

"But we don't believe the outcome will be any different," he said.

With one of the court's 11 seats vacant, the case, if accepted for what is known as an en banc review, would be heard by 10 judges on the court and by Silberman. As a senior judge, Silberman would not ordinarily sit for en banc reviews but would in this case because he was a member of the panel that issued the decision.

A decision on whether the full court will hear the case probably will come this spring, Singer said. Oral arguments probably would follow in the fall, she said.

LOAD-DATE: April 10, 2007

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Washington City Paper (District of Columbia)

December 8, 2006 - December 14, 2006

SECTION: THE DISTRICT LINE; Pg. 13 Vol. 26 No. 49

ACC-NO: 58612

LENGTH: 1584 words

HEADLINE: Elder Hostile

BYLINE: Delaney, Arthur

BODY:

ABSTRACT

"I might be 74 years old, but I ain't gonna die no time soon," says Lewis, who is retired and lives in

Northeast's River Terrace neighborhood. "I'm not paralyzed or nothing like that. I can still get around, and I got a good sense, too."

"My mom retired so she could raise Tay-Tay, so basically he is her child, she is the only mom he has ever known," wrote Iris Holden, Lewis' oldest daughter. She also wrote that [Lawson]'s boyfriend is a violent drinker who has beaten both Lawson and Tay-Tay, and that when Tay-Tay returned from his first trip to North Carolina last year he said he didn't want to go back. Holden also testified that Lawson is receiving federal housing vouchers for parents by having Tay-Tay with her.

Lawson, reached by telephone, denies that she is neglectful, that she or her boyfriend are abusive, and that Tay-Tay doesn't want to live in North Carolina. And she denies any nefarious motive for taking him there: "I don't get public assistance; I don't get food stamps; I don't get Section 8 [housing vouchers]; I don't get none of that," she says. "Everything I have, I work for."

FULL TEXT

Court decision threatens D.C.'s grandparent custodians.

Dontayvious "Tay-Tay" Greene lived with his great-grandmother Bessie Lee Lewis all his 11 years. Every morning she got him up, gave him a bath, and sent him to school, and every evening she looked forward to seeing him come through the gate. She knows she's the best person to raise Tay-Tay.

"I might be 74 years old, but I ain't gonna die no time soon," says Lewis, who is retired and lives in Northeast's River Terrace neighborhood. "I'm not paralyzed or nothing like that. I can still get around, and I got a good sense, too."

And Tay-Tay has a good sense of who looks after him: "My grandmother is my mother," he wrote in a September letter.

But an Aug. 31 opinion by the D.C. Court of Appeals, the District's highest court, has made it impossible for Lewis to become Tay-Tay's guardian-and stifled her attempts to get him back from his birth mother, who showed up at Lewis' door in October and put the boy into a car bound for North Carolina.

The appeals decision sent legal advocates for children and grandparents alike into high alert. This ruling held that a lower court exceeded its authority in giving child custody to a nonparent, and its opponents fear it could jeopardize a huge number of stable child-grandparent relationships. More than 8,000 D.C. grandparents are the primary custodians of their grandchildren, according to the 2000 Census.

In September, a coalition of legal advocates-including incoming Ward 6 D.C. Councilmember Tommy Wells-submitted friend-of-the-court briefs opposing the appeals-court decision.

Lewis' trouble started only when she decided to take advantage of the city's new Grandparent Caregivers Pilot Program, which the D.C. Council passed in March with people like her and her great-grandson in mind. Lewis has lived on Social Security and a pension since she retired to raise Tay-Tay in 1996, and the average \$766 a month subsidy that the program offers would help pay the bills. But it requires the applicant-a grandparent, great-grandparent, great-aunt, or great-uncle-to obtain a court order granting custody to be eligible.

As soon as Lewis learned about the program, she went to court. On Sept. 25, she filed for joint custody. Even though she had been solely responsible for the boy his whole life, she still wanted him to be able to see his mother.

"It seemed like a good idea," says Lewis. "I love her, and I love him."

She figured that Tay-Tay would stay in D.C. during the school year as he always had and would maybe spend part of the summer with his mother in North Carolina, as he had last year.

But it backfired. When Luvenier Lawson, Tay-Tay's mother and Lewis' granddaughter, received the court papers at her residence in Wilson, N.C., she repeatedly threatened Lewis over the phone.

"I'm gonna set this motherfucking house on fire," Lawson said, according to court documents. "All y'all can kiss my ass."

On Oct. 29, Lawson showed up at Lewis' door. There was nothing she could do to keep Lawson from grabbing two bags of old clothes and putting the boy into the car.

Two days later, Lewis returned to court and filed an emergency motion for sole custody, but Superior Court Judge Jerry Byrd ruled that "the court does not have the authority to take custody of a child away from a parent and give it to a nonparent." Byrd cited the appeals-court opinion as basis for dismissing both the motion and Lewis' original request for custody.

On Nov. 15, Matt Fraidin, a UDC law faculty member, filed an emergency motion to alter Byrd's ruling, with a series of witness statements from Tay-Tay's friends and relatives attached.

"[Lawson] doesn't involve herself in his health, school, or welfare," wrote Lewis' son Larry Lewis.

"Luvenier has neglected her children from the time they were born," wrote Minnie Mitchell, one of Lewis' daughters. (Lawson has another son whom Lewis raised until age 4.)

"My mom retired so she could raise Tay-Tay, so basically he is her child, she is the only mom he has ever known," wrote Iris Holden, Lewis' oldest daughter. She also wrote that Lawson's boyfriend is a violent drinker who has beaten both Lawson and Tay-Tay, and that when Tay-Tay returned from his first trip to North Carolina last year he said he didn't want to go back. Holden also testified that Lawson is receiving federal housing vouchers for parents by having Tay-Tay with her.

Lawson, reached by telephone, denies that she is neglectful, that she or her boyfriend are abusive, and that Tay-Tay doesn't want to live in North Carolina. And she denies any nefarious motive for taking him there: "I don't get public assistance; I don't get food stamps; I don't get Section 8 [housing vouchers]; I don't get none of that," she says. "Everything I have, I work for."

Fraidin doesn't think Lawson is the person to be raising Tay-Tay. He heard about the case from friends at court who knew he was fighting the appeals-court decision. For Fraidin and others, Lewis' story proves that the ruling is causing the bad consequences they feared.

"It means kids like Dontayvious can't be protected by their caretakers," Fraidin says. "Child after child after child is going to be put at risk in the same way Dontayvious has been put at risk."

Because of the way the appeals decision is being interpreted, at least by Judge Byrd in Lewis' case, grandparents don't have legal standing to file for custody, which could mean the end of the subsidy program, Fraidin says.

The Consortium for Child Welfare—a coalition of 22 nonprofits—joined Fraidin in opposing the appeals decision, arguing that it "significantly impacts the clients they serve by limiting, if not eliminating, the ability of relatives and other caregivers to obtain custody of children," in a Sept. 14 motion to get involved in the case. In their opposing brief, they point to the grandparent-subsidy program itself as evidence that the D.C. Council never intended for it to be impossible for grandparents to obtain custody.

Wells, who in addition to being a D.C. councilmember-elect is executive director of the Consortium for Child Welfare, thinks the lawyers may be able to beat back the appeals decision.

But if the Court of Appeals upholds its decision, Wells says he will come up with a legislative fix when he takes his seat on the council next month. His solution would make it easier for grandparents to have standing to file for custody based on how long a child has lived with them.

Not everybody is upset with the ruling. The Legal Aid Society, a nonprofit that provides assistance to the poor in family-law cases, among other areas, filed a brief supporting the parents-only decision.

"There are very difficult cases that arise on both sides of this issue," says Legal Aid attorney Barbara McDowell. She points to just such a case where a mother was "erroneously accused of neglect."

Legal Aid's position is that "a parent's relationship with his or her child is constitutionally protected," and the D.C. Council has never made a provision for nonparents to sue for custody outside of the abuse and neglect system.

McDowell says, however, that Legal Aid would be "open" to some kind of legislative fix to the problem.

The question is which option—grandparents-allowed or parents-only—would be the best for kids, says Bob Guttman, a volunteer on the executive council of the AARP, which favors allowing grandparent custody. "There are always problems, and you try to pick the one that causes the fewest," Guttman says. "This is a bunch of well-meaning folk seeing different cases as most likely."

The two parties arguing over Tay-Tay certainly see different cases.

Lawson says it's Lewis who wants to make money off the kid. She says that when Tay-Tay's great-grandma took him to North Carolina last year, none of this came up, and that it's only happening now because of the new subsidy program. She says the boy is happy and that his teacher says he's doing well in school.

"Is there a way I can divorce my family? I don't trust them," she says. "They are very sneaky and conniving."

For her part, Lewis may never have a chance to give her side of the story to a judge. "It's so sad," she says, staring at two backpacks full of Tay-Tay's books and school supplies still in her living room. "I miss my baby."

SIDEBAR

"Child after child after child is going to be put at risk in the same way Dontayvious has been put at risk."

-UDC'S MATT FRAIDIN

GRAPHIC: Illustrations

LOAD-DATE: August 16, 2007

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The Washington Post

January 19, 2006 Thursday
Final Edition

SECTION: D.C. Extra; T03

LENGTH: 772 words

HEADLINE: An Eviction Over a Crime Is Upheld;
D.C. Protections Set Aside For U.S.-Subsidized Units

BYLINE: Henri E. Cauvin, Washington Post Staff Writer

BODY:

A tenant who faces eviction for allowing or committing a crime in federally subsidized housing in the District is not entitled to time to eradicate the criminal activity before eviction proceedings begin, the District's highest court has ruled.

In a case with implications for thousands of subsidized rental units across the city, the D.C. Court of Appeals last week upheld the eviction of a woman after a fatal shooting at her Southeast Washington apartment.

In the December 2002 incident, the woman's boyfriend shot her cousin, who had been drinking and had initiated an altercation with the woman in her home in the Atlantic Terrace Apartments.

When D.C. police searched the apartment soon after the shooting, officers found the 12-gauge shotgun used in the killing as well as a semiautomatic pistol and ammunition for both weapons.

Within weeks, the landlord, Winn Residential LLP, moved to evict the woman, Santosha Scarborough,

saying that her lease prohibited criminal activity.

The U.S. Department of Housing and Urban Development requires such a provision in the leases of units it subsidizes through the Housing Choice Voucher Program, previously known as Section 8, and the Supreme Court has upheld the legality of the federal government's one-strike policy.

But Scarborough contested the eviction in D.C. Superior Court, saying that local law provided her with additional protections. She argued that the landlord had not given her sufficient notice and argued, more significantly, that under the District's Rental Housing Act of 1985, she was entitled to 30 days to correct the violation before the landlord could begin eviction proceedings.

At trial, the landlord argued that the law could not be interpreted to cover the sort of criminal conduct in the case. Citing an earlier ruling in an eviction case, the landlord said the District law was intended to cover conditions such as keeping a pet or smoking in a unit, not a criminal act or ongoing criminal activity.

D.C. Superior Court Judge John M. Campbell sided with Winn but not with the argument about the intentions of the D.C. law. Under the circumstances, the judge said, the federal regulations superseded the District's laws and precluded any opportunity to cure the conditions. If, Campbell said, "there were a right to a cure, that would effectively gut the import of the federal regulations on this point, namely that endangering health and safety justifies a termination."

Campbell's ruling was appealed to the D.C. Court of Appeals, and the case was argued in September 2005 before Judges Michael W. Farrell and Inez Smith Reid and Senior Judge Warren R. King.

In the court's opinion, written by Farrell, the judges agreed with Campbell's reasoning that the federal regulation trumped local law.

"The question," Farrell wrote, ". . . is whether the application of the District's cure opportunity for criminal violations that threaten the safety and peace of other tenants would 'stand as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.' It is clear to us that it would."

The ruling strengthens the hand of the D.C. Housing Authority, which administers the District's federal housing voucher program, the agency's general counsel, Margaret McFarland, said.

"This is important," she said, "in that it allows us to continue our efforts to make safer communities."

The authority oversees about 9,000 units of federally subsidized housing in the District and distributes federal vouchers for an additional 9,000 to 10,000 rental units in the city, McFarland said.

But Nathan A. Neal, a supervising lawyer with D.C. Law Students in Court who represented Scarborough, said the ruling gives the government a disconcerting degree of latitude. "It's a true one strike and you're out," Neal said. "It gives them carte blanche."

Neal said that Scarborough, who has six children and whose eviction has been stayed pending the appeal, did not know that her boyfriend, Desmond Barr, was keeping firearms in the house. Barr was acquitted of second-degree murder but convicted of weapons charges.

Although the Supreme Court has permitted evictions even when the leaseholder was not aware of the criminal activity, Scarborough's attorneys had hoped that the District law would afford her additional protection.

"It's an important protection, and we don't think, despite the court's opinion, that Congress intended to do away with these protections in states that provide them," said Barbara McDowell, the appellate director for the Legal Aid Society of D.C., which filed a brief in support of Scarborough.

LOAD-DATE: January 19, 2006

July 21, 2005, Thursday

SECTION: WASHINGTON DATELINE

KR-ACC-NO: K3242

LENGTH: 1129 words

HEADLINE: Roberts built arguments on all sides of the political spectrum

BYLINE: By Stephen Henderson

BODY:

WASHINGTON _ As one of Washington's top appellate lawyers, Supreme Court nominee John Roberts represented big business against employee claims, coal companies against polluted communities, and contractors seeking an end to government race preference programs.

But Roberts also defended a town's right to prevent development on private property, fought for indigenous people's rights to self-determination, and _ for free _ helped welfare recipients who feared losing their benefits.

Viewed through a political prism, Roberts record seems to lack any particular ideological bent. So what, if anything, are Americans likely to infer from Roberts' legal career about his views, in advance of the fight over his nomination to the Supreme Court?

One court watcher puts it simply: "The answer is both too much, and too little," said George LaNoue, a political science professor at the University of Maryland, Baltimore County, who once worked on a case that Roberts was handling.

"Of course, an organization looking for an appellate lawyer is going to choose someone who will both understand the case and be sympathetic to their side, so that tells you something. But you can't attribute every sentence from the arguments in a given case to the lawyer who handled it, because they're ultimately just representing their client. It's the client's position, not theirs, that they're advocating."

But Roberts' choice to represent clients of many political stripes does shed light on his approach to the law _ and paints him in stark contrast to some of the other justices already on the high court.

Justice Antonin Scalia, for example, spent most of his legal career as a law professor and government lawyer whose prolific writing and speeches helped guild the modern conservative legal establishment. Justice Ruth Bader Ginsburg spent much of her career as the nation's leading legal advocate on women's issues.

Their work was steeped in their ideologies, and highly reflective of their views of how the constitution ought to be interpreted.

But as a hired advocate, Roberts has mastered building arguments on all sides of the political spectrum and avoids easy labeling.

"He's very much a lawyer's lawyer," said Barbara McDowell, director of the appellate practice at the Legal Aid Society in Washington, who has worked on two cases in which Roberts was involved, once on the same side and once in opposition.

"He is very practical-minded. This work requires mastering a lot of detail, and searching for the common-sense approach to things."

In that way, McDowell said, he is like the person he would replace on the court, Sandra Day O'Connor.

"It's not unlike the approach she took to cases on the bench," McDowell said.

Any examination of Roberts' work as an advocate has to begin with his stunning numerical achievements.

He argued 39 cases before the Supreme Court, winning 25. There aren't many other advocates in Washington who can claim a similar record, either by volume or success. Some court watchers call Roberts, 50, the premier appellate attorney of his generation.

His reputation is undoubtedly as a conservative advocate, though, and that is reflected in the bulk of the cases he handled while at Hogan & Hartson LLP, a high-powered law firm with lawyers across the political spectrum.

Roberts represented the American General Contractors, writing briefs for the organization that pushed for an end to affirmative action programs in two cases involving the Department of Transportation and Department of Defense. Roberts represented coal companies fighting to avoid paying retirement benefits to employees and seeking to avoid expensive reclamation projects in communities where they mine.

He represented Toyota Motor Manufacturing when it sought to deny that the Americans with Disabilities Act required it to accommodate a worker who had developed carpal tunnel syndrome.

Many of the clients he represented as a lawyer share the conservative views of the reach of federal government power that Roberts has demonstrated in his two years as a federal appeals court judge, giving pause to some court watchers.

"The Supreme Court is about delineating the powers of the federal government, and deciding how much life will be breathed into the protective rights in the Constitution," said University of Pennsylvania law professor Nathaniel Persily. "There are a lot of indications that on those issues, Roberts will live up to what Bush promised to do, which was put another Scalia on the court."

But Roberts also took cases that required him to advocate positions inconsistent with conservative views of the Constitution.

In 2000, Roberts represented a native Hawaiian group before the Supreme Court seeking to exclude other ethnic groups from voting for trustees of an agency that oversees programs for those of Hawaiian ancestry. On the other side were conservative legal icon Robert Bork and Theodore Olsen, who would go on to serve as President Bush's chief legal advocate at the high court.

The court ruled against Roberts' clients, with the liberal bloc of justices dissenting.

In a 2002 case that decided whether a planning agency in the Lake Tahoe Basin could prevent development on private land without it being considered a property "taking" for constitutional purposes, Roberts represented the side that conservatives opposed. He convinced the court to side with him _ while conservative Justices Scalia and Clarence Thomas and Chief Justice William Rehnquist dissented.

Roberts' involvement in such cases is explained most simply by his job description: lawyers take clients who hire them. And they have an ethical duty to represent those clients to the best of their ability, no matter their personal views.

But Roberts' experience in that arena will serve him well on the high court.

"A strong appellate attorney has to understand the interconnectedness of things, and appreciate the deep, sometimes divisive policy issues that go into deciding how a set of facts lead to an outcome," said Norm Ankers, who went to Harvard Law School with Roberts and now heads the trial division of the Honigman, Miller law firm in Detroit. "That's also what a good appellate judge will do."

Ankers said Roberts is also a "fundamentally decent and kind man," whose combination of high-powered intellect and humility will likely disarm even those who strongly disagree with him.

"I think he'll be a coalition builder on the court, and because of his intellect, he'll convince people of the value of his opinions and maybe even convince them to join him," Ankers said.

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JOURNAL-CODE: WA

LOAD-DATE: July 21, 2005

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Sheriff

May 2003 - June 2003

SECTION: SPECIAL REPORT; Pg. 9 Vol. 55 No. 3 ISSN: 1070-8170

ACC-NO: 37481

LENGTH: 1124 words

HEADLINE: Supreme court hears sheriff's qualified immunity case

BYLINE: Terault, Mike; Weintraub, Richard.

Richard Weintraub, Esq. and Mike Terault

BODY:

ABSTRACT

The National Sheriff's Association and 35 state sheriffs' associations submitted two separate Amici Briefs to the US Supreme Court in support of granting qualified immunity to the case of Sheriff Dan Lucas and his deputies. The Supreme Court heard oral arguments from both parties, in a case that has oral implications for local law enforcement officials across the nation.

FULL TEXT

With the support of the National Sheriffs' Association and 35 state sheriffs' associations, a California sheriff's case made it to the United States Supreme Court. The nation's highest court heard oral arguments March 31, in a case that has implications for local law enforcement officials across the nation.

At issue is a law enforcement official's ability to execute search warrants on Indian lands-and to be protected from liability for doing so.

The Supreme Court heard oral arguments from John Kirby, attorney for Sheriff Dan Lucas of Inyo County, Calif.; Barbara McDowell, Assistant to the Solicitor General of the United States, and Reid Chambers, a Washington lawyer representing the Paiute-Shoshone Indians Tribe in the above-described case.

What began as a routine state criminal investigation of alleged welfare fraud by three members of the tribe employed by the tribe's casino may turn into a potential landmark case on the use of the doctrine of qualified immunity (42 U.S.C. [sec]1983) by law enforcement and the extent tribal sovereign immunity interferes with state criminal investigations.

The National Sheriffs' Association (NSA), joined by 35 state sheriffs' associations, submitted two separate Amici Briefs in support of granting "qualified immunity" to Sheriff Dan Lucas and his deputies in this case. Officials connected with the case believe that NSA's briefs played a role in the Supreme Court's willingness to take the case, because the briefs helped the court to see that the case was not just a local issue but one that had ramifications for law enforcement across the nation.

"Certainly, when you get an Amicus Brief such as the one filed by NSA that's signed on by the sheriffs'

associations of 34 states, plus by the Western States Sheriffs' Association, it certainly sends a message," said Kirby.

The case had been a long and difficult odyssey for Sheriff Lucas. It all began in March 2000, when the sheriff's office entered the property of the Bishop Paiute tribe's gaming enterprise acting under a search warrant issued by the California Supreme Court. Time card entries and payroll records for three casino employees were seized under this warrant in connection to a state investigation of possible welfare fraud. The tribe subsequently went to court for injunctive relief on the grounds that the search, in their view, interfered with their right to "sovereign immunity" and self-government. The tribe also sought punitive damages against the sheriff personally, alleging that their civil rights had been violated and that the laws were sufficiently clear that the sheriff should have known that he had no jurisdiction to seize the records.

"The part of this that was the hardest for me to bear was that they didn't just attack me as the office of sheriff but as Dan Lucas, the person," Sheriff Lucas commented. "It makes it a little more personal when they're going after your house."

The federal district court dismissed the tribe's claims. But the tribe appealed. The Court of Appeals for the Ninth Circuit reversed the district court's decision. It could have ended there, but the sheriff and the county agreed to press on. Sheriff Lucas said there had been many who doubted that the case would make it to the Supreme Court. "So many people pooh-pooed the idea that it would ever get that far," the sheriff said.

Kirby concurred that the odds were long. There are approximately 8,900 petitions put before the Supreme Court a year, he said. But only 75 to 80 cases are actually heard each year.

"I don't think it really set in for me until we were there in the courtroom," Sheriff Lucas said.

The three issues heard by the court in oral argument were: (1) Whether Sheriff Lucas had jurisdiction to execute a valid search warrant issued by a state court to obtain employment records (tribal property) from the tribe's casino without interfering with the tribe's sovereign immunity; (2) Whether the tribe is an "individual" with standing to sue under the terms of 42 U.S.C. [sec]1983; and (3) Whether "qualified immunity" should be extended by the court to Sheriff Lucas, which was denied him by the Ninth Circuit Court of Appeals.

Why is the case important to sheriffs?

"If any investigation proceeds to an Indian reservation, law enforcement needs to know about what rights they have to go on the reservation and search. Right now, that's not clear," Kirby said. "And if they make a mistake and somehow violate that tribe's rights-and the tribe's rights are not the same as others-in connection with a search or an arrest, then the tribe can claim damages under 42 U.S.C. [sec]1983, which allows for substantial damages against them personally as well as their employer."

During the Supreme Court proceedings, Justice Anton Scalia challenged the concept of tribal sovereign immunity by stating that the U.S. Congress has never passed federal legislation recognizing sovereign immunity by tribes, noting that the concept of "tribal sovereign immunity" has been created by the Supreme Court (i.e. "federal common law"). Justice Scalia noted, "...I am puzzled why tribes should receive greater protection than England or Germany...Why should we [Court] give greater protection to this lesser sovereignty that consists of an Indian tribe?"

The Bush Administration sides in part with the tribe and in part with Sheriff Lucas' arguments. Barbara McDowell argued before the court that search warrants are a "threat to the dignity of sovereign immunity." However, the Solicitor General's Office sides with Sheriff Lucas' arguments pertaining to the lack of standing by the tribe to bring suit under [sec]1983 and strongly urges the court to grant "qualified immunity" to Sheriff Lucas. Reid Chambers, representing the tribe, said the Indian Gaming Regulatory Act of 1988 does not provide state officials with jurisdiction over tribal casinos or tribal property (i.e. employment records).

If the Supreme Court rules favorably on behalf of Sheriff Lucas on the first two issues (i.e. tribal sovereign immunity and on the question of whether the tribe has standing to sue under [sec]1983), qualified immunity will be granted to Sheriff Lucas and he will be protected from liability.

A written decision by the U.S. Supreme Court is expected by the end of June 2003. When the decision is announced, NSA will see to it that all members are advised.

GRAPHIC: IMAGE PHOTOGRAPH, From left to right, Sheriff Tommy Ferrell, NSA President; Sheriff Dan Lucas of Inyo County, Calif.; and NSA Executive Director Tom Faust on the steps of the U.S. Supreme Court

in Washington, D.C.

IMAGE PHOTOGRAPH, From left to right, Attorney John D. Kirby, representing Sheriff Lucas, and Paul N. Bruce, Inyo County Counsel, present a certificate of appreciation to NSA Executive Director Tom Faust.

LOAD-DATE: November 2, 2007

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Sacramento Bee (California)

April 1, 2003 Tuesday
METRO FINAL EDITION

SECTION: MAIN NEWS; Pg. A3

LENGTH: 841 words

HEADLINE: Justices tackle reach of law enforcement;
U.S. Supreme Court's decisions on tribal sovereignty, child molestation will extend beyond state.

BYLINE: Michael Doyle Bee Washington Bureau

DATELINE: WASHINGTON

BODY:

Two distinct cases involving limits to California law enforcement captivated the U.S. Supreme Court on Monday, with implications reaching far beyond the state's boundaries.

One case involves employees of an Indian casino on the Sierra Nevada's east side. The other involves prosecution of a child molestation suspect nearly half a century after the alleged crimes. Oral arguments in both showed how provocative facts underlie broader principles, from Indian tribal sovereignty to the Constitution's ban on ex post facto laws.

State and tribal governments alike are carefully watching the tribal sovereignty case, arising from an investigation of individuals on the Bishop Paiute reservation in Inyo County. The basic question is: When can local sheriffs use search warrants on tribal lands while investigating incidents that occur off the reservation?

"If the states don't have the ability to issue search warrants, then that evidence is immune," attorney John D. Kirby argued on Inyo County's behalf Monday, and "what we end up with is gaps in the criminal justice system."

California and nine other states agree, warning in a common brief that the case "raises the specter of Indian country becoming a safe haven for criminals."

The tribe and its allies - including several states such as Washington and Montana - retort that tribal sovereignty properly protects Indian land. While local law enforcement officials can investigate individuals, the tribes say this doesn't extend to tribal governance or permit the seizing of tribal property.

"The tribe is not subordinate to the state of California," tribal attorney Reid Chambers told the court, "so the tribe's policies cannot be displaced by California."

The case is deemed particularly significant because a growing number of the 560 federally recognized tribes nationwide have built casinos. The casinos, or their employees, potentially pose more targets for outside

investigators.

"The fundamental right and responsibility of government is to protect its citizens," Kirby said.

On tribal land northeast of Kings Canyon National Park, the Paiute-Shoshone Indians of the Bishop Community built the Paiute Palace Casino. Inyo County investigators in 2000 sought to obtain employment records for three casino workers to prove the workers were illegally receiving welfare assistance while holding down paid jobs.

Managers of the casino, however, cited the tribe's sovereign immunity and refused to honor the search warrant. The investigators ultimately used bolt cutters to enter the building where the records were kept.

Inyo County concedes the tribes enjoy sovereign immunity - similar to that enjoyed by foreign governments - but now argues this shouldn't extend to investigation of crimes allegedly committed off tribal land. Kirby said the search warrants should be granted, and tribes get a chance to complain later.

"That's not much of a remedy, is it?" said a skeptical Justice Ruth Bader Ginsburg.

A potential way out was advanced by Justice Antonin Scalia, who pressed the distinction between tribal and commercial documents. Two other justices also noted the possibility that a casino's commercial records can be obtained without threatening the tribe's overall sovereign independence. "You win this case if you say, 'We can subpoena the commercial records of a tribe,'" Scalia said.

"We'd be happy to win the case on those grounds," Kirby said.

The Bush administration is primarily siding with the tribe, with Assistant Solicitor General Barbara McDowell telling the court that "the execution of a search warrant is a particular threat to the dignity of a sovereign tribe."

The court on Monday also took up the case of Marion Reynolds Stogner, charged with sexually abusing his two daughters a long time ago. One daughter claims she was abused between 1955 and 1964, and the other claimed she was abused between 1967 and 1973; both were younger than 14 during the time of the alleged abuse.

The statute of limitations used to be three years for such crimes, but the California Legislature in the 1990s changed this so someone could be charged within one year of the victim filing a report. This change was applied retroactively, meaning Stogner could be charged in the 1990s even though, given the time of his alleged crimes, the statute of limitations would have long since expired.

The court must determine whether this violates the constitutional ban on ex post facto laws, which retroactively punish an act that was not criminal at the time it was committed.

"This law does not criminalize conduct that was innocent when it was done," argued Janet Gaard, a California special assistant attorney general.

Alternate deputy defender Roberto Najera, though, told the court that "there is no offense once the (original) statute of limitations has run."

Justice David Souter sounded sympathetic, stating that increasing the statute of limitations is tantamount to increasing the seriousness with which a crime is taken.

* * *

The Bee's Michael Doyle can be reached at (202) 383-0006 or mdoyle@mcclatchydc.com

NOTES: PITOL & ; LIFORNIA

LOAD-DATE: September 9, 2008

December 6, 2001, Thursday

SECTION: TODAY'S NEWS

LENGTH: 1064 words

HEADLINE: SUPREME COURT MULLS STATES RIGHTS ISSUE IN TELECOM CASES

BODY:

U.S. Supreme Court justices hammered attorneys with questions as they heard 2 complex cases Wed. challenging rights of federal courts to review interconnection enforcement decisions by state PUCs. Legal issues dealing with states rights and Constitutional questions piqued justices' interest as they questioned nearly every aspect of 2 cases. Cases, involving Md. PSC and Ill. Commerce Commission (ICC) center on 2 basic issues: (1) Whether U.S. Constitution's sovereign immunity provision bars companies from challenging state PUC decisions in federal court. (2) Whether federal courts can hear some challenges to PUC interconnection decisions but not others. States argued that Telecom Act called for federal court review only of initial PUC action approving interconnection agreements but not when PUC made subsequent decisions to enforce that original ruling.

Some telecom experts in audience said court didn't appear likely to agree on broad sovereign immunity issue because there was precedent for allowing such suits. Concerns expressed by ICC about naming individual commissioners in such suits also seemed to get little interest from justices. But outcome was less clear on 2nd question of whether there should be "bifurcated" approach to reviewing PUC rulings, as several justices termed it. They expressed concern about creating "confusing" approach in which challenges to some PUC decisions could be heard in federal courts and others in state courts. Several asked attorneys how many cases generally stemmed from state participation in interconnection agreements, indicating concern that such cases could end up flooding Supreme Court because of jurisdictional questions. Richard Metzger, Focal Communications attorney who viewed argument from audience, said competitors main interest here was to gain "clarity."

At issue is Telecom Act's provision for U.S. Dist. Court review of disputes over interconnection agreements negotiated, and sometimes arbitrated, under state PUC authority. Two cases heard Wed. are based on somewhat different legal premises: (1) ICC case says sovereign immunity provision of Constitution and Sec. 252 of Telecom Act bar parties from challenging PUC enforcement decisions. (2) Md. case centers on interpretation of Sec. 1331 of U.S. Code, which allows U.S. Dist. Courts to hear all lawsuits arising under federal law, including those involving state actions. U.S. said that section was very broad and allowed federal court review of all suits stemming from federal laws. Md. PSC argued that section applied only to federal laws that specifically called for federal judicial review. Agency said Telecom Act mentioned judicial review only in context of "approvals" and not enforcement, so "approvals" were only actions on which states can be sued, issue that state of Ill. agreed with.

Neither state appeared to challenge idea of federal lawsuits over approvals, limiting their opposition to suits over enforcement actions. However, idea of different treatment for different types of state actions seemed to make justices uncomfortable. After Ill. Solicitor Gen. Joel Bertocchi said enforcement of interconnection agreements should be done by state courts, Justice Anthony Kennedy said that was "odd concept, a state court looking at federal law." Bertocchi explained that enforcement of interconnection agreements fell under state contract law. "It sounds like a mess," said Justice Stephen Breyer, asking why Congress would want different jurisdictions for different types of proceedings, question seconded by Justice David Souter. Bertocchi answered that Congress wanted dual jurisdiction because it would "recognize that these [enforcement] cases are state law driven."

Bertocchi said this case wasn't about basic federal issue of competitive access but rather "it's about whether Ameritech owed money" to competitors, "a contract case." Barbara McDowell, asst. U.S. Solicitor Gen., responded that "there have been many cases before this court involving federal [review] of state actions," including precedent- setting 1908 Ex Parte Young case in which railroad companies were permitted to sue Minn. attorney gen. She also agreed with Justice Kennedy that it could be argued that regulators had waived their immunity when they chose to participate in federal interconnection program. Justice Antonin Scalia said

he couldn't "see how the federal government would get into this without being able to [participate in enforcement.]" Confusion cited by justices "all the more argues for uniformity" through federal court review, McDowell said.

In Md. case, Verizon attorney Mark Evans countered that all parts of interconnection agreements should be viewed as federal and every action, "every interpretation" had federal implications. In fact, he said, every provision of an interconnection agreement "is like a tariff" that other carriers can adopt: "It belongs in federal court." Bifurcation would be impractical, he said. Testifying in Ill. case, WorldCom attorney Paul Smith said there was one area where WorldCom disagreed with Verizon on that point -- WorldCom thought it should have option of state or federal court review, depending on issue. "Every case is not a federal case," he said, and enforcement cases often are seen as state contract law cases.

Adding to confusion is possibility that one of cases could be dropped for lack of standing because it was brought by winning party, Ill. Commerce Commission. After ICC ruled that Ameritech had to pay reciprocal compensation, Ameritech sought review in U.S. Dist. Court, Chicago, which refused ICC's request for dismissal on sovereign immunity ground but still ruled in ICC's favor on reciprocal compensation issue. "You won," Breyer said during presentation by Ill. Solicitor Gen. Bertocchi. "I wouldn't think you could appeal," Breyer said, joining several justices in questioning whether Ill. had standing. Bertocchi replied that state was appealing court's refusal to dismiss case, not its eventual ruling in favor of ICC. Md. case also involved dispute over reciprocal compensation payments to competitors, this time by Verizon.

Two separate oral arguments were heard, one for each case, by 8 justices. Justice Sandra O'Connor recused herself as she often does because of personal investments. -- Edie Herman

LOAD-DATE: December 5, 2001

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Reuters News

November 7, 2001 Wednesday 6:02 PM GMT

LENGTH: 583 words

HEADLINE: U.S. high court considers disability law's reach.

BYLINE: By James Vicini

BODY:

WASHINGTON, Nov 7 (Reuters) - In a case that could affect millions of workers, the U.S. Supreme Court questioned on Wednesday whether an impairment that prevents an employee from doing a specific, job-related manual task qualified as a disability under federal law.

The high court considered narrowing the reach of the Americans with Disabilities Act of 1990, a law that bans job discrimination against disabled workers and that requires employers to offer them reasonable accommodations.

Lawyers for the Justice Department and Toyota Motor Corp. argued a U.S. appeals court applied the wrong test by ruling that an impairment preventing a worker from performing a particular job task constituted a

disability.

A lawyer for the worker, Ella Williams, who suffered from carpal tunnel syndrome, a repetitive strain injury that causes pain in the wrists and hands, replied the law was meant to cover such impairments.

The ruling could affect millions of U.S. workers who suffer repetitive strain injuries or similar impairments that leave them partly disabled. Industry groups have said the case could have a significant impact on a broad range of businesses.

Toyota's lawyer, John Roberts, who has been nominated by President George W. Bush to be a U.S. appeals court judge, said the law required "a substantial limitation on a major life activity."

"SPECIALIZED, IDIOSYNCRATIC LIMITATION"

He said the law did not cover a "specialized and idiosyncratic limitation," such as the illness that afflicted Williams, an assembly line worker at the company's plant in Georgetown, Kentucky.

"She says she can do other assembly line work," Roberts said. "The record shows Ms. Williams can do a broad range of tasks."

Justice Stephen Breyer asked whether a trial should be held to determine the seriousness of the disability. "Is this person hurt badly enough that there are an awful lot of things she can't do?" he asked.

Justice Department lawyer Barbara McDowell supported Toyota. She said the law required an individual to have a "significant restriction relative to a normal person" in basic tasks involving "every-day life."

Justice John Paul Stevens asked whether it was relevant that Williams also could not perform other jobs, such as a roofer, an electrician or a painter.

Robert Rosenbaum, representing Williams, said the law "is about working. It's about a lawsuit to keep a job."

He disagreed with Justice Antonin Scalia, who said the evidence in the case did not support that Williams was unable to substantially perform manual tasks.

Rosenbaum said she could not lift anything weighing more than 20 lbs. and was unable to use her arms and shoulders.

Scalia said Congress in adopting the law was "addressing what it thought was a limited number of people, the handicapped." He questioned whether carpal tunnel syndrome constituted a disability.

WHAT ABOUT A BAD BACK?

Justice Sandra Day O'Connor said "someone who has a bad back, tendinitis or carpal tunnel syndrome" can use the workers' compensation law. The disabilities law focused on "someone who is wheel-chair bound," she said.

Williams was given a job as a quality inspector and had to perform four different tasks. One task in the paint inspection section requiring her to wipe down passing cars at a rate of one car per minute, causing her problems.

Justice Ruth Bader Ginsburg said the rotating, different tasks represented a typical business practice. "As I understand assembly lines, that's not uncommon."

A decision is expected in the case early next year.

LOAD-DATE: January 13, 2005

November 7, 2001, Wednesday

LENGTH: 928 words

HEADLINE: Court reviews what makes a disability

BYLINE: By MICHAEL KIRKLAND, UPI Legal Affairs Correspondent

DATELINE: WASHINGTON, Nov. 7

BODY:

The Supreme Court heard arguments Wednesday on the scope of the Americans with Disabilities Act in a case that could have a profound effect on the American workplace.

The 1990 ADA bans discrimination against the handicapped, and among other things, requires employers to "reasonably" accommodate a worker whose disability affects a "major life activity."

At issue is whether the law's protections cover a limited group or a broad spectrum of workers. Specifically, the justices are being asked to decide whether a limited impairment associated with a specific job makes someone eligible for protection under the ADA.

A lawyer for Toyota Manufacturing of Kentucky, supported by the Bush administration, told the justices Wednesday that the law's scope is relatively narrow.

In contrast, a lawyer for a former Toyota employee tried to make the case for a broader interpretation.

The Toyota subsidiary in Germantown, Ky., employed about 7,500 people when the case began. Most of the Germantown facility contains assembly lines for cars sold in the United States and abroad.

Ella Williams joined the company in 1990 as an assembly line worker. However, shortly afterwards she developed a repetitive motion injury -- bilateral carpal tunnel syndrome in her wrists and bilateral tendinitis in her neck and arms.

The company says the injuries apparently came from having to grip vibrating pneumatic tools to perform her job.

Toyota of Kentucky says it tried to accommodate her injuries -- the company actually settled an earlier ADA lawsuit -- transferring her to quality control inspection.

In that capacity, her work was confined to two of four stations normally required of such an inspector. As part of her new duties, she visually inspected painted cars as they moved along an assembly line. At her other station, she was required to use both arms to wipe down the cars.

After three years, the company said she would have to rotate on all four stations, the same as other quality inspectors. The expanded work included wiping down cars with "highlight oil," a job that included gripping a block of wood with a sponge attached to the end.

Williams again complained of pain in her neck, arms, shoulders and hands after several weeks doing the new duties. She requested a transfer to her old job, saying that she could do it, but the company declined.

The company says she eventually refused to show up for work, and was considered to have voluntarily resigned.

However, Williams filed suit in federal court against the company under the American with Disabilities Act.

A federal judge ruled for the company, but an appeals court ruled for Williams, saying her claimed disability affected a "major life activity" -- a requirement under the act -- such as performing manual tasks.

The company then asked the Supreme Court for review.

Williams' lawyers unsuccessfully opposed the review, contending that her disability did indeed affect a "major life activity" as required under the ADA.

"Ella Williams is 41 years of age, is married and has children," they said in an opposing brief. "She reads at the ninth-grade level, and her mathematical skills are at the 10th-grade level. She described her vocational background as, 'Production work and factory work's what I've known my whole life.' "

Speaking for Toyota on Wednesday, Washington attorney John Roberts Jr. told the justices that the appeals court used an incorrect interpretation of the law.

"Repeatedly wiping down cars ... is not a 'major life activity' ..." Roberts said. In order to win a claim under the ADA, a "plaintiff must show a substantial limitation in a broad range of manual tasks."

As for Williams, she "didn't show an exclusion from a broad class of jobs," Roberts argued. "She just showed that some jobs were not open to her."

Assistant U.S. Solicitor General Barbara McDowell supported Roberts.

Speaking for Williams, attorney Robert Rosenbaum of Lexington, Ky., urged the justices to rule for his client, but said they should not necessarily affirm the appeals court.

The appeals court used an incorrect analysis when it said "an individual must show that their limitation affects their work," Rosenbaum said.

Justice Anthony Kennedy asked Rosenbaum whether work itself was a "major life activity" covered by the ADA.

"It is my opinion that work is a 'major life activity,' " Rosenbaum said, but a plaintiff should not have to prove under the ADA that a disability is related to the plaintiff's work, despite the appeals court ruling.

"I don't think that is the law, and I don't think that it should be the law," Rosenbaum said.

Several justices, particularly Justice Antonin Scalia, expressed doubt that Congress meant to protect those suffering from repetitive motion injury under the ADA.

Scalia questioned whether Rosenbaum's interpretation would include too large a portion of the U.S. population under the ADA umbrella.

Congress recognized that the ADA would affect 43 million people, or 17.3 percent of the population, when it enacted the ADA, Rosenbaum replied.

Scalia countered by saying that when you factor in "wheelchair-bound ... and home-bound people," "it brings you pretty high up to that figure."

However, Rosenbaum continued to contradict Scalia, saying the justice was wrong on the record.

"The ADA is about working," Rosenbaum said. "It's about a lawsuit to keep a job."

The Supreme Court should hand down a decision in the case sometime over the next few months.

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Content: 02002000 02006000 02007000 02008000 04016000 11006000

LOAD-DATE: November 8, 2001

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The San Francisco Chronicle

JUNE 26, 2001, TUESDAY, FINAL EDITION

SECTION: BUSINESS; Pg. B2

LENGTH: 673 words

HEADLINE: High court says USDA violated First Amendment

SOURCE: Chronicle Staff Writer

BYLINE: Eric Brazil

BODY:

The future of the American mushroom industry's research and promotion program has been clouded by a U.S. Supreme Court decision striking down mandatory assessments on growers to pay for it.

United Foods Inc. of Bell, Tenn., prevailed over the U.S. Department of Agriculture by arguing that it was compelled to pay for a program that helped its competitors.

The 1990 Mushroom Promotion, Research and Consumer Information Act, passed by Congress, was found unconstitutional because it violated the First Amendment, the court decided in a 6-to-3 ruling yesterday.

"Just as the First Amendment may prevent the government from prohibiting speech, the amendment may prevent the government from compelling individuals to express certain views," Justice Anthony M. Kennedy, author of the majority opinion, wrote.

In arguing, unsuccessfully, to retain the program's mandatory assessments, Justice Department attorney Barbara McDowell had argued that "as long as Congress has a legitimate interest in strengthening the market for a particular agricultural commodity, Congress is entitled . . . to enact this sort of program and impose it on an industry."

The court's rejection of that argument sends the USDA back to the drawing board to figure out what it should do about a program it regards as effective and good for agriculture.

"USDA generally regards promotion activities conducted under federal marketing agreement and order programs and federal research and promotion programs to be effective tools for market enhancement," U.S. Secretary of Agriculture Ann M. Veneman said in a prepared statement. Such programs, she said, "offer opportunities to maintain, develop and expand markets for agricultural products both at home and abroad."

The 1990 Mushroom Promotion, Research and Consumer Information Act, making mushrooms an official USDA research and promotional program, was the brainchild of the Mushroom Council, which represents about 95 percent of the nation's mushroom growers.

Nationally, the farm gate value of the mushroom crop (what the farmers are paid, not what the crop is worth in the store) is close to \$1 billion. Pennsylvania is the nation's No. 1 mushroom-producing state, but the California crop was worth \$161.6 million in 1999.

United Foods is a founding member of the council. It is also one of the nation's biggest mushroom growers, with operations in Ventura; Salem, Ore.; and Fillmore, Utah. It employs 1,000 workers who cultivate button, portobello and shiitake mushrooms marketed under the Pictsweet label. United is a diversified grower that supplies several supermarket chains with fruits and vegetables. It is the only council member to lodge a legal protest against the mandatory assessment of one-quarter cent per pound to finance the program.

"It's been a long fight," said United spokesman Donald Dresser of the lawsuit filed in 1997. "We lost every round until we got to the (6th) Circuit Court of Appeals."

Just what practical effect the court's decision will have on the Mushroom Council is unknown.

"Whatever I'm told to do, I'll do," said Bart Minor, executive director of the council, which is headquartered in his hometown of Dublin and has a budget of \$2 million per year. "I'm just waiting to hear from USDA."

The court made a distinction between research programs and marketing programs. The decision appears to be a direct threat to six other research and promotional programs for blueberries, honey, peanuts, popcorn, potatoes and watermelon.

But the court's action does not apply to about 50 agricultural commodities for which industrywide

assessments are made for generic ads. The court had previously ruled that joint advertisements are constitutional in heavily regulated industries, such as milk production.

Chief Justice William Rehnquist and Justices John Paul Stevens, Antonin Scalia, David Souter and Clarence Thomas joined Kennedy in the majority. Dissenting were Justices Stephen Breyer, Ruth Bader Ginsburg and Sandra Day O'Connor.

LOAD-DATE: June 26, 2001

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Fresno Bee (California)

May 7, 2001, Monday FINAL EDITION

SECTION: LOCAL NEWS; Pg. B1

LENGTH: 1047 words

HEADLINE: Lawyer likes Supreme challenge Former Fresnan fights high court battles for Uncle Sam.

BYLINE: Michael Doyle BEE WASHINGTON BUREAU

DATELINE: WASHINGTON

BODY:

Barbara McDowell's political passions bloomed in Fresno long before she started scoring wins at the U.S. Supreme Court.

"I was one of the few people who'd cut class to go to a Board of Supervisors meeting," McDowell said of her days at Hoover High School.

Nerdy? Not really.

Now one of the federal government's top lawyers, McDowell caught the political bug at age 8 while watching the 1960 Democratic presidential convention on television. She eventually won student body office herself, and while in college she helped run the 1972 Fresno County campaign for Democratic presidential nominee George McGovern.

Final San Joaquin Valley score: Richard Nixon, 222,634 votes; George McGovern, 164,056 votes.

But since her uphill student days promoting a liberal candidate in a largely conservative region, Hoover's one-time co-valedictorian has tasted serious victory. As an assistant solicitor general, the 49-year-old McDowell now is a repeat performer before the Supreme Court and a lawyer whose words carry special weight.

"What a great feeling it is," McDowell said, "to stand up and represent the United States government."

So far, McDowell has won six cases and lost two in the nation's most high-pressure legal arena. She's waiting to hear about two other Supreme Court cases she argued. One in particular, defending the ability of farm groups to compel payment of assessments to fund industry advertising, could seriously affect McDowell's native state of California.

Some of the cases argued by McDowell involve the reach of America's core governing document, the Constitution. Others involve interpreting what Congress meant by certain statutes. All force the former Wolters Elementary School student to shoulder the special obligations of the Solicitor General's Office.

"We have to be cognizant of the interests of the government as a whole," McDowell said. "We can't just be

interested in winning."

Writing, not law, first lured McDowell east. She'd transferred from California State University, Fresno, where she'd been editor-in-chief of the Daily Collegian, to study journalism at George Washington University. She then worked as a journalist before she entered Yale Law School.

"I thought I was ready for a new challenge," McDowell said, and "I was ready to go back to school."

Before she took on Uncle Sam as a client, McDowell was in private practice representing the deep-pocketed likes of R.J. Reynolds Tobacco Co. and aerospace giant Northrup Grumman. Money was no object.

Her former law firm of Jones, Day, Reavis and Pogue reported profits of \$725,000 for each Washington-based partner last year, according to a Legal Times survey.

Her parents, James and Joyce McDowell, now retired and still living in Fresno, had ample reason to be proud.

And, competing on behalf of a client appealed to her; she could have comfortably stayed with the firm for her whole career.

"It's fun to be an advocate," she said. "It's fun to win; it's not fun to lose."

So it says something about the special appeal of the Solicitor General's Office that McDowell took a pay cut to join the government in 1997.

Sometimes called the 10th justice, the solicitor general is a presidential appointee whose arguments traditionally are listened to with particular care by the nine justices of the Supreme Court.

That's because the Solicitor General's Office is both a gatekeeper and an advocate. It determines which cases to appeal when the government loses, and speaks for the federal government before the Supreme Court. In cases involving important issues where the government is not a party, the office also decides when to file an amicus curiae (friend of the court) brief.

President Bush's nominee to be solicitor general, University of the Pacific graduate and conservative activist Theodore Olson, has yet to be confirmed by the Senate.

Most of the staff lawyers, though, are career professionals such as McDowell and thus outside the patronage realm.

All face, periodically, the intellectual jousting known as oral argument that is peculiar to the Supreme Court. Typically, each side gets 30 minutes to make its case.

The justices, though, try to hijack the arguments with mind-spinning hypotheticals and constant interruptions -- as McDowell learned in her inaugural argument, involving a South Dakota Indian tribe.

"I don't think I even got through, 'May it please the court,'" before the first questions started, McDowell recalled.

Another flavor of oral argument was shown last month, when McDowell defended the mushroom promotion and research program.

Small world that it is, one of the more attentive spectators was Fresno agribusiness lawyer Kendall Manock, whose firm employed McDowell briefly as a temporary secretary nearly three decades ago.

Manock had also filed a brief on behalf of the Western Mushroom Marketing Association defending the program.

Critics say the program's mandatory assessments improperly compel farmers to speak through advertising they may not like.

"I mean, suppose I am a member of the People for the Ethical Treatment of Mushrooms," Justice Antonin Scalia proposed to McDowell. "And I think that mushrooms should not be eaten at all. Can I be compelled to take part in this advertising?"

"Well, then," McDowell replied, "presumably you wouldn't be a mushroom producer and you wouldn't be covered by this statute."

"Oh no," Scalia shot back, "I produce them to make them happy. I just don't harvest them."

The crowd laughed, but Scalia sought more than amusement.

Within his jolly hypothetical beat a serious question -- could compelled advertising ideologically offend the people paying for it and therefore pose a First Amendment problem?

McDowell had to return Scalia's serve, and then immediately face another, and another.

To prepare in the week before an argument, McDowell will stay in her Justice Department office until 10 or 11 p.m.

Her colleagues will subject her to practice sessions called moot courts, and she'll periodically awaken in the middle of the night thinking about the case.

"People in this office work incredibly hard," McDowell said, "and want to do the best job possible for the American people."

The reporter can be reached at mdoyle@mcclatchydc.com or (202) 383-0006.

LOAD-DATE: May 8, 2001

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April 18, 2001 Wednesday
Late Edition - Final

SECTION: Section A; Column 3; National Desk; Pg. 18

LENGTH: 1161 words

HEADLINE: Supreme Court Roundup;
Justices Return to Commercial Speech Quandary

BYLINE: By LINDA GREENHOUSE

DATELINE: WASHINGTON, April 17

BODY:

For the past 11 years, under the Mushroom Promotion, Research and Consumer Information Act of 1990, the Agriculture Department has required mushroom growers to contribute to an advertising program that encourages American consumers to eat more mushrooms. Most of the mushroom industry supports the program enthusiastically.

But United Foods Inc., a Tennessee company that sells mushrooms under the brand name Pictsweet, emphatically does not. It has refused since 1996 to pay the assessment, going into federal court to argue that the program was a form of compelled speech that violated its rights under the First Amendment.

In a lively Supreme Court argument today, the question was where to draw the line between permissible economic regulation and an infringement of a corporation's right not to speak.

"Sometimes what you don't say is as important as what you do," Laurence H. Tribe, representing the dissident mushroom producer, told the court.

Mr. Tribe said United Foods objected to being forced to pay for a generic advertising program that

contained an implicit message with which it strongly disagreed, namely: "Brands don't make a difference, and if you've seen one mushroom, you've seen them all."

In a 5-to-4 decision four years ago, the Supreme Court upheld an advertising assessment program for the growers of California peaches, plums and nectarines. The government is now arguing that under that 1997 decision, *Glickman v. Wileman Brothers*, the mushroom program is clearly constitutional.

But the federal appeals court in Cincinnati did not see it that way when it ruled in 1999 that the mushroom assessments violated the First Amendment. That court, the United States Court of Appeals for the Sixth Circuit, held that while the assessments for the California fruits were a valid part of a broader regulatory program -- a federal marketing order that governed the size, grade and maturity of the fruit that was sent to market -- the mushroom program dealt essentially with just advertising and so could not be justified on the same terms.

Arguing the government's appeal today from the Sixth Circuit ruling, Barbara B. McDowell, an assistant solicitor general, said the appeals court made a mistake in treating the two assessment programs differently. Both served the same "legitimate nonspeech purpose" of "strengthening and stabilizing the market for an agricultural commodity," Ms. McDowell said.

The assessments, which range up to a penny per pound, depending on the quantity of mushrooms, "do not abridge the freedom of speech of any mushroom producer," Ms. McDowell told the court. No producer is "compelled to speak," she said, adding that producers are "simply required to contribute to a program that furthers the interests of the industry."

"Not in their view," Justice Antonin Scalia observed of United Foods.

The government's position is that the First Amendment stakes in the case are minimal because the speech involved is purely economic, without an ideological component.

"Sometimes the court has recognized that money can be speech, but here it's just money," Ms. McDowell told the justices.

But Justice Scalia, a dissenter in the California fruits case, said it was not necessarily easy to define ideology. Suppose, he said, that he belonged to an organization called People for the Ethical Treatment of Mushrooms, whose members believed that mushrooms should not be eaten.

Ms. McDowell replied, "Then presumably you wouldn't be a mushroom producer."

Justice Scalia rejoined, "I produce them to make them happy."

The bantering tone of much of the argument, which had the courtroom audience chuckling appreciatively, did not conceal that the court has serious work to do in this case, *United States v. United Foods Inc.*, No. 00-276. It is part of the justices' continuing effort to arrive at a coherent theory of commercial speech, a goal that has eluded the court in a series of recent cases.

Next week, the court will hear arguments in another commercial speech case with potentially broader implications than this one, a tobacco industry challenge to restrictions on outdoor and indoor cigarette advertising imposed by the state of Massachusetts in an effort to deter smoking by teenagers.

By their questions today, the justices probed for the implications of the mushroom case beyond agricultural assessments.

"Suppose the government thought kids were spending too much money on designer clothes," Justice Anthony M. Kennedy said to Ms. McDowell. Could the government require fashion designers to contribute to advertising urging consumers to buy generic clothes?

That would be a "somewhat more difficult question," Ms. McDowell said, because the designers would be required to support a program that was against their own interests.

As a fallback position, the government is arguing that the advertising program does not involve speech by the mushroom producers at all. Ms. McDowell said it was the government itself that spoke through the promotional activities of the Mushroom Council, the industry group set up under the law to run the program, and that consequently the program in no way violated the First Amendment rights of any participants.

Mr. Tribe, on behalf of United Foods, objected vigorously. "The idea that the Mushroom Council is

somehow the voice of America is not plausible," he said. That a message "is permitted by the government does not mean it is the government's voice," he continued, adding that true government speech "should be funded from general revenue, not from special assessments on targeted groups."

There were also these other developments at the court today:

Back Pay

The court ruled 9 to 0 that when employees win back pay awards, employers are liable for the federal unemployment, Social Security and Medicare taxes as of the date of payment, rather than the earlier date when the wages were originally supposed to have been paid.

The decision, *United States v. Cleveland Indians Baseball Co.*, No. 00-203, resolved a dispute among the lower courts. It will cost the Cleveland team some \$100,000 in taxes on more than \$2 million in back salary it paid in 1994 to settle a dispute with members of the Major League Baseball Players Association over players' free agency rights. The pay covered salary due to 22 players in 1986 and 1987. Justice Ruth Bader Ginsburg wrote the opinion for the court, overturning a decision by the Sixth Circuit and upholding the Internal Revenue Service's interpretation.

Contract Dispute

The court ruled unanimously that a contractor on a public works project whose pay is withheld without a hearing cannot sue in federal court for a violation of due process if the state provides a remedy for a breach-of-contract claim of this sort. California law provides such a remedy, Chief Justice William H. Rehnquist wrote for the court in *Lujan v. G & G Fire Sprinklers*, No. 00-152, overturning a ruling by the United States Court of Appeals for the Ninth Circuit, in San Francisco.

URL: <http://www.nytimes.com>

LOAD-DATE: April 18, 2001

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The Associated Press State & Local Wire

April 17, 2001, Tuesday, BC cycle

SECTION: State and Regional

LENGTH: 620 words

HEADLINE: Court weighs fees assessed to pay for ad campaigns

BYLINE: By NANCY ZUCKERBROD, Associated Press Writer

DATELINE: WASHINGTON

BODY:

A Tennessee-based mushroom grower argued before the Supreme Court Tuesday that the government should not be allowed to force the company to pay for generic ads designed to boost the whole industry.

The justices seemed divided on the subject, which could affect the marketing campaigns for other

commodities. Federal and state regulators oversee dozens of generic ad programs such as the "Got Milk?" campaign.

United Foods Inc., of Bells, Tenn., argued that the ads amount to unconstitutional forced speech. And Justice Antonin Scalia joined in, questioning the government's position that the ads were not ideological.

He said a mushroom grower forced to pay for the program could be a "free marketer" who is ideologically opposed to collective advertising. "What is this ideological line that you are drawing?" he asked government lawyer Barbara McDowell.

United Foods lawyer Laurence Tribe argued the generic ads did not help the company's brand and in some cases might be deemed offensive, such as a campaign that suggested mushrooms were aphrodisiacs.

"It should not be permissible for the government to make people propagate messages," Tribe said.

Justice Ruth Bader Ginsburg asked McDowell if growers had the ability to express their opinions about the ads to officials. McDowell said they did.

Ginsburg said requiring companies to pay for generic ads is not the same as preventing them from running their own ads. "It is very different from saying 'I'm closing your mouth,'" Ginsburg said.

McDowell said the First Amendment limits government interference with private speech but does not limit the government's own speech.

Tribe argued the ads don't really represent government speech, since the Agriculture Department merely plays an oversight role. A council of mushroom industry officials actually creates the ad campaigns, Tribe said.

Ginsburg seemed to have trouble with that argument. She asked if the agriculture secretary was the ultimate "approver" of ads. McDowell said the secretary does have that authority.

The Supreme Court heard a similar case in 1997 involving growers of California peaches, plums and nectarines. The justices said being required to pay for generic ads did not amount to unconstitutional forced speech in that instance.

The dispute between United Foods and the government began when the mushroom grower stopped paying the advertising assessment in 1996.

The federal government went to court and won a decision from a federal judge in Jackson, Tenn. The 6th U.S. Circuit Court of Appeals reversed that decision, saying the assessment violated the First Amendment.

Unlike California fruit, mushrooms are generally unregulated by the Agriculture Department, and therefore, growers cannot be forced to pay for generic advertising, the appeals court said.

The government argued the Agriculture Department's oversight of the generic marketing program constitutes a form of regulation.

McDowell said very similar marketing programs are in place for the beef, pork and cotton industries.

Tribe was cautious about predicting what other advertising campaigns he thought would be affected by a decision in the mushroom case.

"It's a little hazardous to predict whether something would fall under the mushroom side of the law or the tree fruit side of the law," Tribe said.

A decision is expected before the court term ends in June.

Mushrooms are grown in almost every state, but Pennsylvania accounts for more than 40% of total U.S. production, according to the Mushroom Council.

On the Net:

Mushroom Council: <http://www.mushroomcouncil.com>

For the appeals court ruling: <http://www.uscourts.gov/links.html> and click on 6th Circuit.

LOAD-DATE: April 18, 2001

March 22, 2001 Thursday FINAL EDITION

SECTION: B; Pg. 5B

LENGTH: 618 words

HEADLINE: U.S. SUPREME COURT: Justices hear tribal court case

BYLINE: Christine Dorsey

BODY:

By CHRISTINE DORSEY

DONREY WASHINGTON BUREAU

WASHINGTON -- Can state officials claim immunity from being sued in tribal court? Lawyers for the state of Nevada and the Fallon Paiute-Shoshone Tribal Court squared off Wednesday in front of the U.S. Supreme Court to argue the question.

Throughout an hour-long hearing in the case Nevada v. Hicks, several justices suggested that a ruling in favor of Nevada could undermine American Indian tribes everywhere.

'State officials should not be sued in tribal court,' Nevada senior deputy attorney general C. Wayne Howle told the nine justices.

'You mean never? For anything?' asked Justice Sandra Day O'Connor.

'Not ever,' Howle said. He argued that states and their officers enjoy a constitutional immunity from prosecution in state and tribal courts that enables them to fulfill duties without fear of retribution.

An attorney representing the Fallon tribe disagreed. S. James Anaya argued that tribes have the same legal jurisdiction as states when the matter involves one of their own.

He equated the situation to interstate jurisdiction. If a Nevada official wanted to investigate a California resident, he would have to get permission of a California court before he could proceed, Anaya said.

'The same model applies in a state-tribal situation,' he said.

The proceeding engaged all but Justice Clarence Thomas in a spirited discussion of the limits of tribal court jurisdiction.

The case dates to 1993, when Fallon tribal member Floyd Hicks sued three Nevada game wardens in tribal court for allegedly violating his civil rights when executing two separate search warrants on his property.

The tribal court case was put on hold, however, when the question of sovereignty arose.

During the session, justices struggled not only with the question of whether a tribal court has the authority to hear a case brought against state officials, but also to what extent state officials are compelled to follow tribal law while on a reservation.

Would a state officer who drives onto a reservation to buy gas, and proceeds to break a state law, be compelled to defend himself before a tribal court, asked Justice Stephen Breyer.

'The answer is no, not in a tribal court,' Howle said.

Tribes are not states, and do not enjoy the same sovereignty, Howle said.

But Anaya cited cases involving Cherokee Indians in Georgia and Navajo Indians in Arizona that were ruled in favor of tribal court authority.

And, he added, in the Nevada case a state judge twice ordered the game wardens to seek permission of the tribal court before executing their search warrants.

Justice Antonin Scalia, who appeared troubled by the notion that a tribal court could have such power, wondered aloud why, if the state judge was right to send the authorities to the tribe, the Nevada attorney general's office is so vigorously opposed to the state judge's opinion.

'They've had an epiphany,' he said, sarcastically. Howle said the wardens sought tribal permission 'out of deference to the tribe,' not because it was legally necessary.

Anaya said that the wardens should exhaust all their legal remedies in tribal court, and if they don't like the outcome, they can appeal to federal court.

Howle said that defeats the purpose of state immunity. Plus, he said, tribal court rules and laws often are based on tradition and custom, making it nearly impossible for nonmembers of the tribe to adequately defend themselves.

Barbara McDowell, assistant attorney general at the Justice Department, spoke briefly in favor of the tribe, noting the federal government supports tribal court jurisdiction.

The court has until the end of its June session to rule on the case.

LOAD-DATE: March 23, 2001

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Contra Costa Times (California)

November 9, 2000 Thursday FINAL EDITION

SECTION: NEWS; Pg. A22

LENGTH: 442 words

HEADLINE: COURT TO DECIDE INHERITOR;
A WASHINGTON STATE CASE WILL DECIDE THE BENEFICIARY OF A DIVORCED MAN

BYLINE: Laurie Asseo

BODY:

WASHINGTON Divorce can create sticky situations, especially if the husband dies soon afterward without removing his ex-wife as his life-insurance beneficiary. The Supreme Court wrangled Wednesday over which law governs who gets someone's employee benefits after they die.

"What about ordinary common sense?" Justice Stephen G. Breyer said during arguments in a dispute between a Washington state woman and her late ex-husband's children from a previous marriage.

Ordinarily, Breyer suggested, "people would prefer that their share would go to their children rather than to their just-divorced wife."

Donna Rae Egelhoff contends she is entitled to the life insurance and pension benefits of her ex-husband, David, who died in an accident shortly after they were divorced in 1994.

His children from an earlier marriage say they should receive the benefits.

Egelhoff died without a will, and his ex-wife still was designated as beneficiary of his employer-provided insurance and pension benefits. But his children sued under a Washington state law that says getting a divorce revokes a spouse's designation as beneficiary.

At issue is whether that state law is overridden by a federal law that governs employee benefit programs, the federal Employee Retirement Income Security Act.

Donna Egelhoff says the federal law protects plan participants and beneficiaries by overriding state laws that would divert benefits to someone else.

Justice Department lawyer Barbara McDowell, arguing in support of Donna Egelhoff, said David Egelhoff's wishes were not known but that the only way to change his beneficiary was if he had filed a form doing so.

"Don't you think there's a reasonable probability here that the plan participant thought the money would not go to his divorced wife?" Justice John Paul Stevens asked.

But Justice Ruth Bader Ginsburg suggested a hypothetical case involving "a man who has just divorced a woman, is tired of her he's off with a young thing, he's not married and he's feeling tremendous remorse" and decides to let his ex-wife have his benefits.

Justice Antonin Scalia said that perhaps Donna Egelhoff had a good lawyer who knew the federal law and told her, "Maybe he doesn't know that, but boy, we're walking away with a good settlement."

Thomas Goldstein, attorney for David Egelhoff's children, Samantha and David, said the couple had a detailed divorce decree.

"He got the tan area rug and she got the exercycle," Goldstein said. But he said that if Donna Egelhoff wins the case, "She's going to come along and recover again. The children are going to be out of luck for no sensible purpose."

GRAPHIC: AP

LOAD-DATE: February 5, 2002

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Copyright 2000 The New York Times Company
The New York Times

June 25, 2000, Sunday, Late Edition - Final

SECTION: Section 9; Page 11; Column 2; Society Desk

LENGTH: 187 words

HEADLINE: WEDDINGS;
Barbara McDowell, Gerald Hartman

BODY:

Barbara Bea McDowell and Gerald Stuart Hartman, lawyers in Washington, are to be married there today by Rabbi Harold S. White at Dumbarton House, a museum.

Ms. McDowell, who is keeping her name, works in the office of the solicitor general in Washington. She

graduated from George Washington University and received a law degree from Yale. She was a law clerk to Associate Justice Byron R. White of the Supreme Court in 1987 and 1988. She is a director of the Shaw Community Ministry, an organization of the United Church of Christ that provides social services to the poor in Washington. She is the daughter of Joyce B. and James M. McDowell of Fresno, Calif.

Mr. Hartman is a partner in Swidler Berlin Shereff Friedman, a Washington law firm. He received a bachelor's degree and an M.B.A. from Columbia University and a law degree from George Washington. From 1976 to 1980, he was a senior trial lawyer in the civil rights division of the Justice Department in Washington. He is a son of the late Eleanor D. and Harold B. Hartman.

The bridegroom's previous marriage ended in divorce, as did the bride's.

<http://www.nytimes.com>

LOAD-DATE: June 25, 2000

163 of 224 DOCUMENTS

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Federal Human Resources Week

May 10, 1999

SECTION: Vol. 6, No. 4

LENGTH: 902 words

HEADLINE: Justice Department Defends EEOC's Power To Award Compensatory Damages

BODY:

In a case before the U.S. Supreme

Court, the Justice Department challenged the argument that the Equal Employment Opportunity Commission has no legal power to award compensatory damages.

The government asked the Supreme Court to resolve the issue of whether the EEOC has authority to award compensatory damages following a decision from the 7th Circuit Court of Appeals in March 1998.

In that case, Michael Gibson filed an EEO complaint against the Veterans Affairs Department alleging that he was discriminated against because of his sex when he was denied a promotion in 1992. A woman who was less experienced got the job instead.

Even though the EEOC found evidence of discrimination, Gibson claims that he was never fully compensated. He was given a promotion with back pay, but he is still fighting to obtain a monetary award for pain and suffering.

The VA argued in district court that Gibson was not entitled to seek damages because he did not ask for them in his EEO complaint. Federal employees are required to exhaust remedies available at the administrative stage before taking legal action. The court agreed with the VA and dismissed Gibson's case.

On appeal, however, the 7th Circuit reversed that decision, ruling that there was no need for Gibson to request damages early on since the EEOC has no authority to award them in the first place.

In oral arguments before the Supreme Court, government attorney Barbara McDowell claimed that the EEOC's authority to award compensatory damages is implied in the Civil Rights Act, which gives the commission power to grant "appropriate remedies" to federal employees who have been subjected to employment discrimination.

The government maintains that "appropriate remedies" include not only relief such as back pay, but also compensatory damages.

But attorney Timothy Kelly, representing Gibson, said that the EEOC has neither the expertise nor the authority to determine how much agencies must pay federal workers who were harmed as a result of employment discrimination. Kelly said that when it comes to assessing compensatory damages, juries have more expertise and can be more objective than the EEOC.

Right to Jury

The Civil Rights Act makes it possible for discrimination victims to sue the government for up to 300,000 in compensatory damages. But the statute specifically provides that "if a complaining party seeks compensatory or punitive damages ... any party may demand a trial by jury."

The dispute is over whether Congress intended the government to be forced to pay damages without the benefit of a jury trial.

Relying on congressional reports, the Justice Department argued in its brief that the jury trial provision was originally viewed as being more beneficial to employees than to employers.

"The House Report specifically addressed concerns expressed by employers that juries would award disproportionately high damages to employees in Title VII cases," the government said.

Chief Justice William Rehnquist appeared to disagree with the notion that agencies don't want the right to a jury trial.

"It seems that the government would certainly rather have a jury trial than no trial at all," he said.

In 1992, the EEOC first took the position that federal employees are entitled to compensatory damages in *Jackson v. United States Postal Service*. According to the government's brief, the EEOC reasoned that it was "acting within its congressionally delegated 'authority to enforce' Title VII in the federal sector."

Since the EEOC began awarding compensatory damages, federal EEO complaints have risen significantly.

McDowell said that in fiscal 1997, a total of 3.5 million in compensatory damages was awarded by federal agencies. Damages were awarded in 80 percent of cases settled by federal agencies, she said.

The government contends that if compensatory damages are not available in the administrative process, many more federal employees will seek redress in court.

Kelly challenged this notion by saying that agencies can still offer monetary awards to settle discrimination cases.

"The problem is having the EEOC force the agency to pay compensatory damages," he said.

The 11th Circuit made the same point in *Crawford v. Babbitt* last August. "Congress provided federal government agencies with the right to a jury trial on compensatory damages," said the circuit court, "and only the agency with that right can waive it in a particular case."

Under a principle known as "sovereign immunity," the government can only be sued when it "consents to be sued." Several Supreme Court cases - going back to the 1940s - provide a basis for sovereign immunity. In 1981, the court ruled in *Lehman v. Nakshian* that "limitations and conditions upon which the government consents to be sued must be strictly observed and exceptions thereto are not to be implied."

In the case of discrimination, Congress has waived sovereign immunity under the Civil Rights Act.

According to Richard Lattimer, a legal counsel for the Pension Benefit Guarantee Corporation, federal agencies have an "inherent authority" to settle a discrimination case based on the possibility that a federal employee could go to court and obtain a monetary award. In such a case, it would be in the agency's best interest to settle.

"I think you can make an argument that it would not violate federal law," Lattimer said.

LOAD-DATE: May 17, 1999

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The Herald-Sun (Durham, NC)

April 27, 1999 Tuesday
Final Edition

SECTION: INSIDE FRONT; Pg. A8

LENGTH: 372 words

HEADLINE: High court looks at question of EEOC conflict of interest

BYLINE: SUSAN STUMME The Herald-Sun Washington bureau

BODY:

WASHINGTON -- The Supreme Court heard arguments Monday over whether the Equal Employment Opportunity Commission can order federal agencies to compensate discrimination victims beyond actual financial losses when those victims work for the government.

Michael Gibson, a Veterans Affairs accountant from Illinois, was passed over for a promotion in 1992 by his female supervisors in favor of a female applicant with less job experience. After filing an unsuccessful complaint with the department, he appealed to the EEOC, which awarded him back pay and a promotion.

The VA was slow to honor the EEOC decision, prompting Gibson to seek financial compensation for mental anguish and emotional distress in federal court. The court dismissed his claim because it said he did not first exhaust all avenues of communication within the agency.

But a federal appeals court in Chicago reversed the decision, ruling that the EEOC could not properly handle Gibson's claim because it cannot award compensatory damages, which the panel said would require a jury trial.

During Monday's hearing, the nine justices questioned the government's lawyer, Barbara McDowell, about a federal agency's responsibility to identify its own discriminatory behavior by advising employees of their rights to redress.

Justice Antonin Scalia noted the "peculiar position that the agency is in, to defend against a [discrimination] claim but advise its employee at the same time as to what claim he should make." Justice Ruth Bader Ginsburg echoed Scalia's concerns, asking how a government agency could prevent such a "conflict of interest."

Federal agencies are required to counsel employees about equal-opportunity questions, McDowell said, but those counselors are only required to advise workers of their rights, not how much money they might be entitled to. In his original complaint, Gibson said he was not fully informed of his rights with the VA and so later filed suit in federal district court for compensatory damages.

Gibson's attorney's, Timothy M. Kelly, told the justices Monday that his client could not specifically request an agency review of possible financial compensation beyond back pay because the claim form used does not request such information.

LOAD-DATE: August 20, 2004

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Associated Press Online

January 12, 1999; Tuesday 14:12 Eastern Time

SECTION: Washington - general news

LENGTH: 555 words

HEADLINE: Court Reviews Scope of Cop Searches

BYLINE: RICHARD CARELLI

DATELINE: WASHINGTON

BODY:

Lawyers for Wyoming and the Clinton administration urged a seemingly sympathetic Supreme Court on Tuesday to let police sometimes search the personal belongings of all passengers inside motor vehicles stopped for traffic violations.

A rule always denying such authority would be "very difficult for police to apply (and) might be exceedingly unworkable," Justice Department lawyer Barbara McDowell argued.

The court's decision, expected by July, could provide important new guidelines on police powers and personal privacy for situations that daily arise countless times nationwide.

One such incident occurred in 1995 when a car driven by David Young was stopped for speeding on Interstate 25 in Natrona County, Wyo., in the early morning hours. After a Highway Patrol officer saw a hypodermic syringe in Young's pocket, Young said he had used it to take drugs.

During the ensuing search, two other officers asked the car's two female passengers to get out the car. One of them, Sandra Houghton, left her purse on the car's back seat. Inside it, police found drug paraphernalia and liquid methamphetamine.

She was convicted on a felony charge, but appealed.

The Wyoming Supreme Court threw out her conviction last April, ruling that police were justified only in searching the car for drugs Young may have had with him and therefore could not search Houghton's purse.

McDowell and Wyoming Deputy Attorney General Paul Rehurek urged the justices to overturn the Wyoming court's ruling. They said police had reason to think Young had drugs in the car, and the officers therefore should have been allowed to search any container including Houghton's purse that might hold the illegal goods.

At times, the lively hour-long argument session appeared to place the rationales of two past Supreme Court decisions on a collision course.

The court in 1948 ruled that police generally may not search passengers in a stopped vehicle without some reason to believe they, as opposed to the driver, have broken some law.

In 1982, the justices said once police reasonably believe a vehicle contains drugs or some other illegal goods they are free to search any container in that vehicle where the contraband might be hidden.

Chief Justice William H. Rehnquist suggested that the 1982 decision was aimed at providing police with a "bright line rule" because previous rulings had "hopelessly confused the issue."

Rehnquist said he worried the Wyoming court's ruling would return courts to "that case-by-case thing where nobody is going to know what the rule is."

Justices Anthony M. Kennedy, Stephen G. Breyer, Sandra Day O'Connor and Antonin Scalia also voiced

doubts about the state court ruling.

But Justices David H. Souter and Ruth Bader Ginsburg voiced concern that the legal rationale to let police search passengers' personal belongings would also allow searches of their clothing as well.

"It could be concealed in the pocket as easily as in the purse," Souter said at one point.

Cheyenne lawyer Donna Domonkos, representing Houghton, urged the court to adopt a rule that would protect passengers and items believed to be their personal belongings from being searched unless police have "probable cause" to believe those passengers of a crime.

The case is Wyoming vs. Houghton, 98-184.

LOAD-DATE: January 12, 1999

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Copyright 1998 Star Tribune
Star Tribune (Minneapolis, MN)

December 3, 1998, Metro Edition

SECTION: Dennis Anderson; Pg. 1C

LENGTH: 1036 words

HEADLINE: Indian fishing case is now in Supreme Court's hands

BYLINE: Dennis Anderson; Staff Writer

DATELINE: Washington, D.C.

BODY:

Late Wednesday morning a case that had been debated with decorum only minutes earlier before the U.S. Supreme Court - Minnesota v. Mille Lacs Band of Chippewa Indians - took a coarser turn. This was a stone's throw from the east lawn of the Capitol.

Players new and old in the long-running dispute were present, some emboldened by what they inferred to be sympathy by the court for the state's case. One of these was Minneapolis businessman Howard Hanson, for whom opposition to Chippewa treaty-rights claims has become a lifestyle.

"The wealthiest people in our country are using the Indians," Hanson asserted before a bank of microphones. "It's just a big pawn game." Then, waving a hand in the direction of the Capitol, Hanson added, "We can't win across the street because it [Congress] is still controlled by big money. That's why we're here [in court]."

To Hanson's left were descendants of the Chippewa who in 1837 signed a treaty with the United States ceding all or parts of 12 east-central Minnesota counties, and much of northern Wisconsin, to the federal government.

Whatever the mood at that signing, whether celebration or resignation, the debate now had turned divisive.

Everyone, it seemed, sensed that after three decades of treaty-rights litigation in Wisconsin and Minnesota, the game was in overtime, with a last-second shot in mid-air.

Victory for the state of Minnesota would validate its contention that it alone can regulate off-reservation hunting and fishing by Indians and non-Indians in Minnesota.

Affirmation of lower-court rulings favoring the Chippewa would solidify the Indians' belief that the 1837 treaty reserved for them widespread hunting and fishing privileges that lie largely outside the authority of state natural resources agencies.

On the issue of treaty rights, Tom Maulson, chairman of Wisconsin's Lac du Flambeau Band of Lake Superior Chippewa, is Hanson's polar opposite.

A big man who is not averse to the suggestion of insurrection in the Chippewas' effort to claim what they say is rightfully theirs, Maulson listened intently for a minute or two, then, punching a finger toward Hanson, interrupted. "How many fish do your [non-Indian] people take?" Maulson said as mini-cams whirled in his direction. "We know how many we take because we count them."

All of this was said outside the Supreme Court, far from the august chambers of Chief Justice William Rehnquist, as well as those of Antonin Scalia, Sandra Day O'Connor, David Souter and the other five justices who for an hour Wednesday morning listened intently to attorneys for the state and the Chippewa.

Rehnquist had opened the proceedings by pronouncing Mille Lacs as Mille Locks, and when he did, some in the court sensed that perhaps this case was too geographically distant, and too flush with minutia - particularly cultural and historical - to command the detailed attention it deserved. Who were these nine people, after all, none of whom likely had ever set foot in Mille Lacs County, much less angled for walleye in Minnesota's pre-eminent sport-fishing water, to decide whose interests should prevail?

Yet any notion that this court had by whim agreed to hear the Mille Lacs case was quickly dispelled when Minnesota assistant attorney general John Kirwin stepped before the justices a few minutes past 10 a.m., Washington time.

Kirwin was barely into his argument when he was interrupted first by Justice Ruth Bader Ginsburg, then by Scalia, then O'Connor, then Rehnquist and O'Connor again. "What has been worked out in Wisconsin?" O'Connor wanted to know of the Chippewa treaty-rights conflict in that state.

Technically, the Wisconsin case was not heard in the Supreme Court on Wednesday. The two states are in different judicial districts. Yet Maulson and other Wisconsin Chippewa leaders, including those from the Red Cliff, Bad River, St. Croix and Lac Courte Oreilles bands, know that if the Supreme Court were to rule in favor of the state of Minnesota, off-reservation hunting and fishing rights granted to Wisconsin Chippewa by a federal appeals court could be in jeopardy.

So it was with some shifting in their seats Wednesday morning that Chippewa supporters viewed exchanges between some of the justices and attorneys Marc Slonim and Barbara McDowell, who in sequence followed Kirwin to a podium at the front of the packed courtroom.

Slonim, of Seattle, has been in the employ of the Mille Lacs band since 1984. McDowell represented the Justice Department, which has sided with the Chippewa.

Despite the able help of Justice Souter, who seemed philosophically aligned with the legal positions of the Chippewa, neither Slonim nor McDowell fared particularly well.

Scalia especially seemed unimpressed by the Chippewa's assertion that an 1850 executive order revoking the Indians' hunting and fishing privileges was invalid.

The justice appeared incredulous at Slonim's contention that the Chippewa who signed the treaty didn't understand that their privilege to hunt and fish was granted "during the pleasure of the president."

Scalia also refuted McDowell's contention that the order was invalid because it was never enforced. Uncloaking his disbelief altogether, Scalia said, "I see. Some executive orders are immediately effective when promulgated, and others are effective only when enforced. I have never heard this argument before."

As precisely as the proceeding had begun an hour earlier, court was dismissed at 11 a.m. Into the sunshine spilled the attorneys, the clients, the keenly interested and the merely curious.

While across the street from the Supreme Court the House Judiciary Committee weighed evidence in the impeachment of President Clinton, the blood feud that has become the Chippewa treaty-rights case flared anew.

Before it was over, longtime American Indian Movement activist Vernon Bellecourt would join Maulson in chiding Hanson. And weighing in on Hanson's behalf was Dean Crist of Minoqua, Wis., who in the 1980s

came to symbolize opposition in that state to Chippewa treaty-rights claims.

But the only voice that matters now is that of the Supreme Court. A ruling is expected by June.

LOAD-DATE: December 3, 1998

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Copyright 1998 Star Tribune
Star Tribune (Minneapolis, MN)

December 3, 1998, Metro Edition

SECTION: Pg. 1A

LENGTH: 1076 words

HEADLINE: Supreme Court's treaty-rights hearing focuses on 1850 presidential order;
In a case that could have broad impact, justices also weighed the wording of treaties and how Indians interpreted them.

BYLINE: Larry Oakes; Staff Writer

DATELINE: Washington, D.C.

BODY:

In a hearing that has sweeping implications for fish and game management in Minnesota's Lake Mille Lacs region, the U.S. Supreme Court pressed attorneys for Chippewa Indians on Wednesday to explain why special treaty harvesting rights are still legal or even necessary.

Among several issues raised by the case, the justices focused on whether a president's order revoked the Chippewas' rights, and they took an interest in another key issue in treaty cases: whether the "plain meaning" of treaties should prevail over what the Indians understood them to mean.

What the court decides, in a ruling expected by the end of June, could affect Indian treaty law nationwide. And in a more immediate concern for Minnesota, it will determine whether eight Chippewa bands are entitled to up to half the fish and game in a region they ceded to the federal government in 1837, 21 years before Minnesota became a state.

The area includes Lake Mille Lacs, the center of a lucrative sportfishing industry and home to the Mille Lacs Band of Chippewa, which says it needs treaty harvesting to save its dying culture.

The band sued the state in 1990 to reaffirm its treaty rights and eventually was joined by seven other bands and the U.S. Justice Department. In 1997, the U.S. Court of Appeals agreed with the Chippewa and allowed the special harvesting privileges to resume after decades in which Minnesota subjected the Chippewa to the same game and fish laws as other citizens.

The hot seat

At Wednesday's hearing Justice David Souter and others asked questions to draw out the Chippewa point of view, and several justices wanted to know how the rights work in practice.

But judges reserved their most strident lines of inquiry in the hourlong hearing for such questions as why a president's 1850 order should be ignored.

The state and the counties and landowners that sided with it argue that President Zachary Taylor's order plainly extinguished the "temporary" rights, guaranteed by the treaty only "during the pleasure of the

president." Opponents of the rights also argue they were extinguished by Minnesota's admission to statehood, later litigation, and - with regard to the Mille Lacs Band alone - an 1855 treaty.

Lower courts have agreed with the Chippewa that Taylor's order was invalid - part of an attempt, later abandoned, to remove the Chippewa from the land they ceded.

Chief Justice William Rehnquist appeared inclined to disagree, beginning an exchange that put Barbara McDowell, the federal government's lawyer, on the hot seat. Rehnquist and Justice Antonin Scalia repeatedly pressed her to explain how a presidential order could be revoked simply because it wasn't followed.

The order "would seem to be self-executing," Rehnquist said. "If a treaty says until such-and-such an event, and that event occurs, why should something else have to occur?"

Souter, to clarify the Chippewas' argument, asked: "Are you saying [President Taylor] had to . . . enforce it? That he [Taylor] never exercised his 'pleasure' because he never carried it through until it was clear?"

"Yes," McDowell responded.

When McDowell suggested that President Franklin Roosevelt might have been misinformed when he wrote a letter confirming that the rights were extinguished, it drew a strong response from Justice Anthony Kennedy: "That's a cavalier attitude about a president of the United States."

Concluded Scalia: "The [federal] government is taking a strange position."

The judges also grappled with the phrase "pleasure of the president," mindful that treaties long have been interpreted as the Indians of the time were thought to see them. Lower courts concluded that, since the Indians thought the treaty said they couldn't be removed except for cause, Taylor's whole removal order was invalid.

"It's highly unlikely the Indians understood 'during the president's pleasure,' " Justice Souter remarked. "They probably assumed they'd enjoy the rights for a considerable time."

Scalia, the Indians' biggest devil's advocate during the hearing, countered: "The notion that they don't have a concept in Chippewa for 'pleasure of the president,' I frankly don't believe."

Some justices sought to understand why the privileges still are needed. When Marc Slonim, the attorney for the Chippewa, argued that the rights "still put food on their tables and are central to their culture," Justice Sandra Day O'Connor shot the kind of quick question that characterized the lively hearing:

"Why can't they use a [fishing] license?"

Slonim replied that several of the cultural harvesting activities, including spearing walleye in the spring spawning season in order to have enough fish for funerals and other gatherings, are against state law. "Before the rights were affirmed, they had to sneak . . ." Slonim said.

Afterward, John Kirwin, an assistant attorney general who argued the case for the state, said: "The fact that they focused so much on the 1850 order is good news for the state. It's the most obvious reason why the treaty rights were extinguished, and many of the justices seemed to go right to that."

Slonim was more subdued, saying only that the justices seemed well-prepared on the issues.

The theory the court adopts, if it reverses, will determine how sweeping the Mille Lacs case becomes. Legal experts say reversal on admission-to-statehood grounds could affect hundreds of treaties nationwide. However, after Wednesday's hearing failed to generate a single question on that issue or the question of a state's sovereign right to manage its own resources, attorneys said they doubted the court will use that theory.

Conversely, some legal experts say that, if the court affirms, it would expand the notion that treaties can't be read at face value but must be interpreted by linguists, historians and other experts.

State officials estimated Wednesday that the case has cost taxpayers between \$ 2 million and \$ 3 million.

- Larry Oakes can be contacted by e-mail at staroakes@aol.com.

Where they stand:

- Chippewa Indians sued the state in 1990, saying they are entitled to special hunting, fishing and gathering rights by a 19th-century treaty with the U.S. government.

- The state, which has appealed lower-court affirmation of those rights, says the privileges were legally

extinguished by a president's order, a later treaty and Minnesota's admission to statehood.

LOAD-DATE: December 3, 1998

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Associated Press Online

February 25, 1998; Wednesday 08:44 Eastern Time

SECTION: Washington - general news

LENGTH: 494 words

HEADLINE: Court Ponders Indian Tax Case

BYLINE: PHILIP BRASHER

DATELINE: WASHINGTON

BODY:

It's a nightmare for a city council or county commission: A cash-rich Indian tribe buys a prime piece of real estate, takes it off the tax roll and builds a profitable hotel or casino.

The Supreme Court wrestled with that scenario Tuesday in a dispute between a county and Indian tribe in Minnesota. The tribe contends that land it buys isn't taxable even if it isn't put into trust with the federal government, a process that requires federal officials to consider the impact on local governments.

Justice Stephen Breyer raised the possibility that a tribe could buy "five acres in downtown Minneapolis" and stop paying taxes on it.

Tribes "ought to buy up all the land in sight," said Justice Antonin Scalia. "They've got a great advantage over other land owners namely, they don't have to pay taxes."

The case stems from Cass County's attempt to keep \$64,000 in taxes that the Leech Lake Band of Chippewa paid under protest on land it bought for a casino and other uses on its reservation in north central Minnesota, a popular vacation area.

Thirteen states and more than a dozen county governments filed arguments with the Supreme Court backing Cass County. The Justice Department sided with the Leech Lake band, along with numerous other tribes around the country.

Tribes argue their right to govern themselves is at stake.

Concerns about tribal land acquisitions have escalated in recent years with the surge in tribal income from gambling.

Elsewhere in Minnesota, Gov. Arne Carlson is fighting an attempt by the wealthy Shakopee Mdewakanton Dakota Community to put 593 acres of land into trust in Shakopee, a Minneapolis suburb. In New Mexico, a tribe is fighting the state's effort to tax land that the tribe leased to non-Indians.

A Justice Department lawyer, Barbara McDowell, argued local governments can't tax tribal property without clear authority from Congress. "It's impossible to tell here what Congress intended for land that came back into the hands of the tribe," she said.

Jim Schoessler, an attorney for the Leech Lake tribe, sought to assure the justices that tribes' off-reservation

property isn't necessarily tax-exempt. But his assertion was met with a chorus of "why not?" from Sandra Day O'Connor and other skeptical justices.

Cass County contends that any land that a tribe can freely sell is taxable; trust lands cannot be sold without the Interior Department's approval.

The Leech Lake reservation dates back to the mid-1800s.

Under an 1889 law that was part of a national effort to assimilate Indians into white culture, much of the reservation was carved up and given to individual tribal members or sold to the public. The case involves 21 parcels that the tribe started buying back in the 1980s.

After a federal judge ruled in favor of the county, the 8th U.S. Circuit Court of Appeals decided some of the land was taxable and some wasn't.

A decision is expected by late June or July.

LOAD-DATE: February 25, 1998

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The Houston Chronicle

June 29, 1997, Sunday, 2 STAR Edition

SECTION: a; WASHINGTON NOTEBOOK; Pg. 20

LENGTH: 609 words

HEADLINE: Carville to spruce up 'trailer park' language

BYLINE: Houston Chronicle Washington Bureau; Staff

BODY:

James Carville, the colorful Clinton adviser, last week informed reporters that they had been wrong when some had suggested he had made a demeaning reference to Paula Jones' economic status.

Carville said he had not been referring to Jones when in 1994 he quipped: ""You drag \$ 100 bills through trailer parks and there is no telling what you'll find. "

Jones has accused Clinton of sexual harassment when he was governor of Arkansas and she was a state employee staffing a booth in a Little Rock hotel.

However, when Carville was asked who he was referring to when he made the trailer park crack, he responded ""I was actually referring to Gennifer Flowers. "

Flowers claimed to have had an affair with Clinton, when he was governor.

Carville also promised to be more careful with his description of certain types of housing in the future, saying he will use ""mobile home" instead of trailer park.

Wishful thinking, no doubt

Yeah, sure. It must have been with at least a bit of wishful thinking that an Air Force briefer, Col. John Haines, told reporters last week the service's report on the "Roswell incident" should close the case and be the last word.

The Air Force said it was mannequins, balloons and misunderstandings that turned Air Force experiments in the 1940s into a widespread theory of alien beings and flying saucers.

Pentagon spokesman Ken Bacon acknowledged the difficulty of laying to rest the persistent theory: "Probably in another decade, another colonel will be out here" trying again to explain the Roswell incident, Bacon said.

How to tell them apart

The Senate Finance Committee has two members with similar sounding names but differing political philosophies- Sens.

Phil Gramm, the arch conservative Republican from Texas, and Bob Graham, the moderate Democrat from Florida.

At a recent Finance Committee meeting, the two lawmakers came up with a way to differentiate each other. Sen. Graham, in discussing a provision of proposed Medicare and Medicaid savings where he disagreed with his Texas counterpart, referred to Sen. Gramm as my "Teutonic cousin." Gramm quickly came up with a description of his Florida colleague as "my Scottish cousin."

Mixed bag for business

Several Washington attorneys reviewed the Supreme Court's term at a briefing last week for the conservative Washington Legal Foundation that concentrates on cases of interest to business.

They came up with a mixed scorecard, but said that could be good news.

Concluding that "it's difficult to draw any conclusions about how business fared this term," attorney Barbara McDowell, a former Supreme Court law clerk, discussed one analysis that calculated "business won eight and lost eight" of its most important high court cases.

"It's still better than the president's done this term," she commented, without having to mention the cases won by Paula Jones and special prosecutor Kenneth Starr.

A few language notes

Ouch. A health interest group set up a thyroid information display in the Rayburn House Office Building last week, and a placard proclaimed the reception area "Gland Central."

Rep. Lloyd Doggett, D-Austin, complaining of trends on the huge reconciliation bill to carry out the White House-Congress federal budget agreement, called it a "Wreckconciliation" bill.

On another language note, the malapropism is alive and well on

Capitol Hill. One senator gave a new meaning to gravesites when he referred to Arlington National Cemetery as ""hollowed ground." A House member referred to one proposal as ""paying Peter to rob Paul. "

LOAD-DATE: June 30, 1997

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February 25, 1997

SECTION: Pg. Technology

LENGTH: 660 words

HEADLINE: Feminist Group Joins Anti-CDA Fight

BODY:

NEW YORK, NEW YORK, U.S.A., 1997 FEB 25 (NB) -- REPEAT/By Bill Pietrucha. The fight against the Communications Decency Act (CDA) is picking up additional support. Joining the American Civil Liberties Union (ACLU), the American Library Association and others groups opposing the CDA, the Feminists for Free Expression (FFE) submitted an amicus (friend of the court) brief to the US Supreme Court, supporting a lower court's decision against the Act.

The brief was filed in support of the ACLU in *Reno v. American Civil Liberties Union*. The case centers on the constitutionality of the Communications Decency Act, passed in February 1996. The Act makes it a crime, punishable by up to two years in jail and/or a \$ 250,000 fine, for anyone to engage in speech that is "indecent" or "patently offensive" on computer networks of the speech can be viewed by a minor.

Last June, a three judge panel in Philadelphia granted a motion for preliminary injunction against the CDA, unanimously declaring the CDA unconstitutional. After the decision in the ACLU case, a three judge court in New York also unanimously declared the CDA unconstitutional in a similar case, *Shea v. Reno*.

The Justice Department then appealed to the US Supreme Court, which accepted the case. The Justice Department filed its brief with the Supreme Court in late January, and the ACLU file its answering briefs on February 20.

The FFE brief, written by attorneys Barbara McDowell and Sharon K. Mollman of Jones, Day, Reavis & Pogue, states that the CDA "is not carefully tailored or narrowly drawn."

According to the FFE brief, online discussion of sex education, AIDS prevention, breast cancer, lesbian affairs, survivors' stories of incest and rape, news stories on human rights violations, female genital mutilation or sexual harassment all contain material that could be considered "indecent" or "patently offensive" under the CDA.

"FFE was founded on the tenet that the right of free speech is a prerequisite to attaining gender equality and cannot be disregarded for fashionable causes without inevitably harming women's rights," FFE president Jennifer Maquire told Newsbytes. "The brief's arguments support FFE's belief that censorship, however well intended, is ultimately counterproductive to the goal of equality for women."

Maquire noted that the Internet "offers unprecedented opportunities for women to exchange information

and debate ideas."

"There often are no alternatives to the Internet's genderless environment," Maguire said, "and a woman using the Internet may find her speech being taken seriously for the first time."

"For the first time, ordinary women can speak to national and global audiences to discuss the important issues of the day," she said, "But because of the inherent insecurity of the scope of what is banned under the CDA, many Internet users will be silent rather than risk prosecution."

Maguire noted that the Internet has "a specific value to women" in a number of areas.

"There are over 500,000 sites on the Internet that discuss breast cancer," Maguire said, as well as other sites that deal with domestic violence, sexual problems and safe sex."

"The way the CDA is written," she said, "could affect a huge amount of material, including discussions of breast self-examinations and other issues."

"Under the CDA, even the sexual harassment allegations in suits like Clinton v. Jones describing sexual activities and organs could be prohibited," Maguire said.

The anonymity of the Internet also affords women the opportunity to discuss such issues as domestic violence and spousal abuse without fear of retribution, she said.

The government's final reply, or brief, is due on March 7, and a decision by the Supreme Court is expected by June.

(19970224/Press Contact: Jennifer Maguire, Feminists for Free Expression, 212-702-6292/Reported by Newsbytes News Network: <http://www.newsbytes.com>)

(Legal)

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LOAD-DATE: June 3, 1997

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CNN

SHOW: NEWS 1:14 pm ET

October 30, 1995

Transcript # 15-2

TYPE: Interview

SECTION: News; Domestic

LENGTH: 2635 words

HEADLINE: Experts Argue About Whether Talk Shows Mirror Society

GUESTS: **LEXIS-NEXIS Related Topics** Full Article Related Topics Overview

This document contains no targeted Topics.

BYLINE: LOU WATERS

HIGHLIGHT:

While politicians and talk show personalities wrangle over the shows' content, people all over America argue about their value. Experts discuss the shows, their topics, and the audiences they attract.

BODY:

BOBBIE BATTISTA, Anchor: Imagine the chatter at the so-called talk show summit over the weekend in New York. It was a closed door conference of hosts, producers and executives reviewing scathing criticism delivered by former Education Secretary William Bennett and some other lawmakers.

Critics call the shows 'sleeze' and accuse them of undermining America's morals.

WILLIAM BENNETT, Empower America: Americans say, 'We're stressed out. We don't have enough time to take care of our kids and do things,' yet people find the time to watch these shows, to go on these shows, sit in the studio audience of these shows. There's something going on here. Couldn't people's time be spent better? Sure there's such a thing as leisure time. We don't all use our- all of our time in the most constructive way. I sure don't. But this is, it seems to me, positively degrading to us, to our country, to our civilization, to our culture and it's a terrible example to our children.

CHARLES PEREZ, Host, 'Charles Perez': We're doing shows on teenage pregnancy and AIDS and a lot of important issues to young people and I don't think anyone else is out there doing it. And I think Mr. Bennett isn't giving us enough credit for that.

LOU WATERS: Some officials, obviously, are very concerned about the talk shows that dominate much of daytime television these days. Is it as bad as all that, though?

BOBBIE BATTISTA: Well, later this hour we'll ask you to tell us what you think, but right now we're going to talk with a few other folks - with Jeanne Heaton in Athens, Ohio. Miss Heaton is a clinical psychologist who can tell us why some people find these talks shows so appealing and/or harmful. Also with us from Chicago, Charles Cook, former producer for Oprah, Jenny Jones, Morton Downey and Mark Wallberg [sp]. First Amendment lawyer Barbara McDowell is here in Atlanta, and joining us by telephone a man who became so fed up with one talk show that he banished from his television station; Dino Corbin is general manager of KHSL-TV in Chico, California.

LOU WATERS: How are we going to keep them all straight? Let's begin with Dino Corbin out there in California. All of the defenders of the daytime television programs said the solution is just to turn the TV off. That will correct the problem. Apparently there's another avenue. We have general managers out there of television stations who just kicked the program right off the air. Why'd you do that?

DINO CORBIN, General Manager, KHSL-TV: Well, I did it for a couple of reasons. I agree with the producers who say that just turn the TV off because that will send a message, but I have an obligation as a broadcaster to reflect the values of my community and the show did not do that. It continued to, what I would consider, move in a direction that was contrary to what we at KHSL stand for.

LOU WATERS: Well, what was the straw that broke the camel's back in this case?

DINO CORBIN: Well, the show about two weeks ago that was called 'Unusual Dates.' It dealt with a fellow in a dating game scenario looking to get a date with three what looked like ladies of the evening. After some innuendoes and a lot of discussion was gone about, he basically chose his date and then Jenny advised him that they were all three guys.

LOU WATERS: OK. Did you get any public pressure to do this? Or have you gotten any public response that would be negative to your decision?

DINO CORBIN: I've gotten a lot of response to cancel the show. I got a substantial amount of response after I did. I did not get one letter or one phone call that was against my move to do so.

BOBBIE BATTISTA: Do you think that - you are president of the California Association of Broadcasters - do you think you could be starting a trend? Or was this just an individual decision?

DINO CORBIN: Well, I don't know. I didn't really do it to set a trend. I did it because I, again, I have a responsibility to our community and I think that at times, we as broadcasters - in a quest for the dollar or the ratings - have a tendency to start pushing the envelope and we lose track of the fact that the American public is smarter than that and that we have an obligation to present them programming. Now, I agree, talk shows bring up some very relevant and very important topics and they shed light on them. And there has to be a distinction made between shows like Oprah, for example. There's shows that have a great value, but these other shows don't and if it's for pure entertainment, fine, so be it, let it go somewhere else. That kind of thing isn't going to be on Channel 12.

BOBBIE BATTISTA: Let's- Dino Corbin, thanks very much for your comments, and now stay on the line if you can and jump in when you feel like it. But let's go to one of the guys who made some of the decisions for those shows. Charles Cook you were a producer for the show I think that he canceled, Jenny Jones, correct?

CHARLES COOK, Former TV Talk Show Producer: Yes, I was.

BOBBIE BATTISTA: Why did you leave? Why did you stop producing for them?

CHARLES COOK: Well, there's a lot of talk shows out there and actually talk show producers happen to be very marketable right now. That was certainly one reason that I left that particular show. I'm a veteran of different shows. Some of the points Mr. Corbin brought up are very relevant and I'd also like to know what he put in its place? You know, when he says quality programming, what is he running now, you know? And as far getting-

DINO CORBIN: Cheers.

CHARLES COOK: Cheers.

BOBBIE BATTISTA: Cheers.

CHARLES COOK: OK. They're running reruns of Cheers.

LOU WATERS: Good choice.

BOBBIE BATTISTA: OK.

CHARLES COOK: OK. Good choice. But, you know, I think it's very easy to slam the talk shows. But at the same time, you know, there are 20 million people watching them a day, according to some estimate, and I think what a lot of talk shows do is just cater- you know, they're delivering the product and I think people should turn off talk shows if they don't want to watch them.

LOU WATERS: Could you approach this from the evolution of the talk show. I think- I don't know how you feel about it but it seems like Oprah is getting off the hook here.

CHARLES COOK: Oprah is getting off the hook and-

LOU WATERS: She spent 10 years getting to the point where now things are just exploding.

BOBBIE BATTISTA: She built a dynasty on that.

CHARLES COOK: Exactly. Oprah helped create the genre. I mean, I worked at Oprah when I did shows that at the time were exceptionally provocative and people were screaming about it and people didn't think they should be on their shows discussing 'I slept with my sister's husband,' for example. She is getting off the hook. I think Tom Schneider [sp]- I remember when I was in high school I'd watch Tom Schneider talk to a family in which the father became a transsexual, so this has been going on for about 20 years and it is

exploding, it is getting crazier, but the reason for that is because talk shows are cheap to produce and a lot of people watch them. Oprah, for instance, is in 117 countries. I mean, those are a lot of people watching talk shows.

LOU WATERS: We have an article from Vancouver, British Columbia, which says, 'Is TV driving you nuts? A recent U.S. study by a psychologist suggests that television programs that feature people struggling with bizarre sexual and emotional tribulations are a threat to the mental health of North Americans.' Well, we have someone who can speak to that. She's Jeanne Heaton, the psychologist. [interviewing] What about the mental health of North America, vis-a-vis these programs?

JEANNE HEATON, Psychologist: Well, what we're concerned about is that these shows are predominantly about mental health topics. Seventy percent of these shows have a representative of the mental health profession on them and yet they are in a position where they create trouble for their guests, they misinform viewers and they misrepresent responsible mental health practice.

BOBBIE BATTISTA: Are you saying the hosts do that or the psychologists and psychiatrists that are guests on the show do that also?

JEANNE HEATON: Both, actually. The show's have them in a position where they can't really do much because they're relegated to the last five minutes of the show. On the other hand, it's clearly the professionals that have the major responsibility for what they do there and when they provide sound bites of information and say that this is credible practice, this is just not a very good way to inform the public about responsible mental health.

LOU WATERS: That begs the question then, are these talk shows reflecting our mental health or are they contributing to the decline of our mental health?

JEANNE HEATON: Well, the shows like to tell us that they are holding up a mirror to society and as my co-author says, these are essentially a kind of funhouse mirror that misrepresents what's really going on.

BOBBIE BATTISTA: I'm really curious about something. Why - and Charles I want to ask you about this too from your viewpoint, but - why would anybody want to be on these shows because it seems to me that 90 percent of the time they're either embarrassed, humiliated, mocked. Is that 15 minutes of fame worth it to them?

CHARLES COOK: Yeah. I mean, I think- You know, I can't defend all talk shows. I think that the doctor raised some interesting points. I think we're talking about a bunch of different issues today. Certainly one, to backtrack a little bit, is the First Amendment issue. Mr. Bennett certainly has his rights to say what he thinks, talk shows producers have the right to produce if people are watching them. Taking that a step further, a lot of talk shows do put on therapists for five minutes. That's their way of saying, 'You know what, we really tried to help people' when, in fact, they were exploiting people. But I've got to tell you something, as a talk show producer people call me saying, 'Please let me be on this show.'

BOBBIE BATTISTA: Do they really?

CHARLES COOK: They call all these shows. They may want to meet Jenny, they may want to meet Oprah, they may want a T-shirt-

BOBBIE BATTISTA: Are they making up their problems? I think a lot of people wonder if, you know, if-

CHARLES COOK: I would say-

BOBBIE BATTISTA: Are they real? Are they actors? Are they tricksters?

CHARLES COOK: I think a lot of the problems are real. I think one of the debates that some talk show producers have is something that you just- the point you raised earlier is - am I putting things on the air that are reflecting society or is it, in fact, are these just the abnormalities that I am putting on the air? I think that a lot of the people- You know, I've written a novel actually called Talk Show that certainly touched on some of

the things that go on behind the scenes because I think as wild as anything you see on the air, what goes on behind the scenes is as insane. Certainly, some of the people are actors, certainly some of the people are fakes, certainly some of the people are paid to be on TV, they are outright paid, no one wants to talk about that - it's talk shows' dirty little secret - these people are courted but at the same time they call, they write letters, they do everything but beg to be on TV.

LOU WATERS: All right, let's get our- We have another guest here who's been having a little technical difficulty over on her side of the CNN desk here. Barbara McDowell is a First Amendment lawyer. Are there First Amendment issues here? Now, Bennett and Lieberman apparently want to regulate these talk shows but not directly through legislation. So, are their First Amendment issues?

BARBARA McDOWELL, First Amendment Lawyer: Yes, to begin with, the First Amendment protects television talk shows just as it protects more exalted forms of political discourse. There are First Amendment problems, of course, when the government gets involved in regulation. Now, former secretary Bennett and Senator Lieberman say that they don't want the government to get involved they just want citizens to bring pressure on the producers and sponsors of talk shows and this is pretty much OK. It's the kind of speech that the First Amendment is all about. People should be debating these issues and deciding what sort of speech we want.

LOU WATERS: And everybody's talking about it.

BARBARA McDOWELL: Exactly. Now, there is a problem, however, when government officials start applying even informal pressure to broadcasters in terms of what they can air and at some point they do step over the line and start creating First Amendment problems.

BOBBIE BATTISTA: What do you do when you get into what's obscene or indecent because there are laws against that kind of thing and it seems to me that a lot of the topic matter on these shows gets pretty close to that?

BARBARA McDOWELL: Well, it doesn't really come close to obscene. Obscene is a very difficult standard to meet. It has to have no serious literary, artistic, political or scientific value whatsoever and-

BOBBIE BATTISTA: Well, I rest my case.

CHARLES COOK: I think she should watch some of the talk shows.

LOU WATERS: Jeanne Heaton just said that they are harmful.

BARBARA McDOWELL: [crosstalk] -harmful but they still have some value.

BOBBIE BATTISTA: How do you define indecent?

BARBARA McDOWELL: Indecent is a somewhat more easy standard to meet. It's one that the government - the Supreme Court - has said can be regulated to an extent. This is material that deals with patently offensive depictions and descriptions of sexual or excretory activities or organs, as the FCC says, and the Supreme Court has said that this kind of material can be channeled to particular hours of the day when children are less likely to be in the audience, for example, or when parents are more likely to be home to supervise their kids.

LOU WATERS: So, what about the V-chip that Senator Lieberman keeps talking about? Isn't that de facto regulation?

BARBARA McDOWELL: It is de facto regulation because in order for it to work broadcasters are going to have to encode their signals with a warning 'that program includes violent material or sexual material' or whatever and broadcasters say this is for speech and it violates the First Amendment. I think they have a strong argument there.

LOU WATERS: Senator Lieberman's kind of holding the V-chip as a hammer in this whole discussion. We'll talk some more about that later. And we'll talk with all of our guests as we continue this discussion.

BOBBIE BATTISTA: We also want to hear what you think and we ask you to call us at CNN Today at 404-221-1855.

LOU WATERS: OK. We have a first quiz question, is that correct?

BOBBIE BATTISTA: Yes, we do.

LOU WATERS: OK. This is for the mug which we don't have out here, but we'll have it out here.

BOBBIE BATTISTA: Oh, here it is.

LOU WATERS: What was the first daytime talk show to air in national syndication? That may be easy for you who follow national syndication type matters. We'll ask three questions, you'll need three answers towards the end of the program in a couple of hours to win the mug. We'll be back.

[end of segment]

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LOAD-DATE: October 30, 1995

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The Philadelphia Inquirer

OCTOBER 8, 1995 Sunday FINAL EDITION

SECTION: EDITORIAL REVIEW & OPINION; Pg. D01

LENGTH: 1646 words

HEADLINE: TRIAL JUDGMENTS / A NEW FOCUS ON TELEVISED PROCEEDINGS DO TELEVISION CAMERAS IN THE COURTROOM SERVE THE PUBLIC OR UNDERMINE THE SYSTEM? PEOPLE ON BOTH SIDES OF THE ISSUE AGREE THE TRIAL WOULD HAVE BEEN SHORTER WITHOUT THEM.

BYLINE: Stephen Seplow, INQUIRER STAFF WRITER

BODY:

Now for the prosecution in the matter of cameras in the courtroom comes Abraham A. Dash, professor of law at the University of Maryland and a former federal prosecutor.

His argument: Cameras almost always distort the system, converting the legal process from a search for truth to an obsession with looking good. Human frailty is just too formidable to prevent it.

Most citizens can't watch gavel-to-gavel coverage of any trial, and wouldn't want to if they could. "What the news programs cover will be what they consider dramatic," he said. "It doesn't give any real picture of a trial. It's only what someone in the editor's office thinks is dramatic.

"Then when the lawyers see it on television, the lawyer who may have looked bad will try to recoup, not for his client, but for his friends. And then they lose the reason for the case."

For the defense: Massachusetts Superior Court Judge Robert Barton, 65, who has presided over a half-dozen televised trials, including one infamous gang rape that drew a lot of attention in the Boston area.

"I've always felt that television could come into the courtroom," said Barton. "Why shouldn't the general public have the same opportunity as the first 100 people who get to the courthouse have - to come and watch a public trial? The ones who don't want television are the ones who don't run a very good courtroom in the first place, and that includes Judge (Lance) Ito."

Barton discounted Dash's concern about lawyers playing to the cameras, saying he has never detected it. "Once the trial starts, there is no difference in behavior," he said. "The lawyers are not different than professional athletes. Ballplayers aren't looking at the cameras; they're doing their thing. In a trial, the judges have their judging to do, and the lawyers their lawyering."

With the nine-month spectacle known as the State of California v. Orenthal James Simpson at an end, there is likely to be a new beginning in the lengthy debate over the propriety of cameras in the courtroom.

Even before the new argument commences, partisans on both sides seem unanimous about one point: Forget the O.J. Simpson trial. It was a bizarre Hollywood aberration, no more typical of the normal course of American jurisprudence than O.J. Simpson was the typical running back.

The defendant was too much of a celebrity, the lawyers too famous, and the judge too lenient.

"Please," pleaded Donald Fischbach, a Fresno, Calif., attorney whose term as president of the California Bar Association ended Sept. 29, "please, don't have a knee-jerk response to this one particular case. It is such an unusual set of circumstances that came together. . . . It's in Los Angeles, an interracial couple, a sports celebrity star, the innocent Goldman there, the Bronco chase a year ago. Everything was as though it was scripted out of Hollywood."

Partisans on both sides are also nearly unanimous on one other point. Judge Ito lost control of his courtroom.

"There is an important role for trial judges to regulate cameras," said Barbara McDowell, a Washington attorney with a number of press clients, "and Judge Ito could have been a little more controlling in the early stages."

Dash, though, argued that it was precisely because of the cameras that Ito exercised less control than necessary.

"Ito had a reputation for being a tough judge who controlled his courts," said Dash. "I know the impact television has on me. If I knew my lectures were going on television, I'd be different."

Gerald Uelmen, a law professor and a member of the Simpson defense team, said in a CNN interview that cameras tend to affect everyone's behavior in high-profile cases, and he believes they should be limited to more ordinary trials. In cases like Simpson's, he said, where the cameras are used "for entertainment rather than education, they affect the behavior of everyone in the courtroom, including the lawyers, including the judge and, most importantly, including the witnesses."

Eric Ober, the president of CBS News and an advocate of cameras in the courts, agreed that they have an impact.

"I do think cameras can affect conduct and the courts are obliged to be careful," he said. "And I don't disagree that had there not been cameras, the Simpson trial would have gone differently and been a lot shorter."

The essential case against cameras was made most forcefully in September 1994, just as lawyers were beginning the process of choosing the Simpson jury, when the Judicial Conference of the United States, the policy-making body for the federal courts, voted to end a three-year experiment with cameras in federal civil trials.

Although the conference meeting was conducted in secret, judges said there were four preeminent objections: Witnesses, who frequently testify against their will in the first place, sometimes feel intimidated by the cameras; lawyers and witnesses alike could be tempted to play to the cameras; jurors in cases that get

publicity could be influenced by a desire to sell their stories; and judges may behave differently.

Others have argued that in most of the 47 states that allow cameras in courts under some circumstances, only the most sensational cases attract a substantial audience. And those cases, just by being sensational, give an embarrassing impression of the system.

"We've literally seen something that shouldn't happen in a trial," said Laura R. Moseley, an attorney who teaches media ethics at the University of Michigan and who has worked as a television analyst in Detroit.

Therefore, said Moseley, who has been a federal prosecutor and doesn't oppose cameras, "we have the sense that this is undermining the system."

But this can be corrected, she suggested, if interested parties come to formal agreements on how they will behave in front of the cameras.

Moseley, incidentally, said she was a television analyst in one racially charged Detroit case, and she is persuaded that the cameras, by allowing the community to witness a balanced trial, may have prevented violence after the verdict.

The federal experiment was conducted in six states, including Pennsylvania, where Judge Edward Cahn, chief judge of the U.S. District Court for the Eastern District, said the judges "tended to like" cameras.

Personally, he said, "I think the media are a better protector of our freedoms than our courts can ever be. I don't believe in closed court sessions or acting behind closed doors.

"But with the media in courts comes responsibility," he added, responsibility not always shown in the Simpson case.

One passionate opponent of cameras, Christo Lassiter, a law professor at the University of Cincinnati, said: "In a jury trial, one makes decisions based upon law. And you do that in some dispassionate way.

"What happens when you televise trials is that you expand the audience from the jury to the world. By telling the world audience what's happening in that trial, participants are criticized and reviewed instantaneously. The reactions get fed back to participants. And they respond to the larger audience and that's to the detriment of what's going on in the courtroom."

Two passionate advocates of cameras are Steven Brill, the founder of Court TV, and Ed Turner, the executive vice president of CNN and no relation to Ted Turner.

"Trials are supposed to be public," Brill said. "And the way to make them public is to take a camera without noise and without lights and show it to people in the larger American community. One hundred years ago, people from all over town would go down to huge courthouses. They'd wave and boo. That was a circus. We think cameras are an antidote to the media circus."

Asked about the assertion that lawyers and judges inevitably will perform differently for the camera, Brill said Court TV has surveyed every judge in the 380 trials it has covered and not one has thought the cameras altered the proceedings.

There have always been high-profile cases, he said, and those cases were spectacles before there were cameras.

Added Turner, whose CNN saw its ratings soar with near gavel-to-gavel coverage of the Simpson trial: "The criticism surrounding O.J. was aimed at what went on outside the courtroom. That the trial inside was prolonged is the fault of the prosecution and defense, not of the camera. Most trials that go on camera have no noticeable change in length or style."

Judge William G. Young of Massachusetts, who allowed cameras in his court when he presided over the notorious 1984 case in which four men were convicted of raping a 22-year-old woman on a pool table in a New Bedford bar, says he has changed his mind about allowing trials on television.

"I thought then that the cameras were unobtrusive and a trial could be managed without affecting the witnesses, the attorneys, or the willingness of people to come forward," said Young, now a federal district judge.

He said he now advocates creating a camera record of a trial, but showing it only after a verdict is rendered. "If you're going to put it on television and you're going to try and assure the highest quality of justice, you're

pretty much going to have to sequester the jury," he said.

Otherwise, jurors are just too tempted to watch news accounts when they get home each night.

Young said he was bothered also by "the rush to judgment, the cottage industry in commentary while the trial is going on. Everyone's in the act doing play-by-play. It's not a game."

One other argument for cameras in the court is that they help educate the public about the judicial system.

Dash, the Maryland professor, agrees. He, like Young, says that taped trials would be just as educational if they are shown at the end, when lawyers cannot be affected by the nightly news reports of their work.

That may be so, say the journalists. But it wouldn't be news.

LOAD-DATE: October 28, 2002

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Daily Variety

June 15, 1993 Tuesday

SECTION: NEWS; Pg. 4

LENGTH: 556 words

HEADLINE: Ginsburg presents mixed bag for b'casters

BYLINE: DENNIS WHARTON

DATELINE: WASHINGTON

BODY:

Broadcasters wary over the FCC's crusade against "indecent" programming may have found a First Amendment champion at the Supreme Court in Judge Ruth Bader Ginsburg, who President Clinton nominated on Monday to serve on the high court.

Ginsburg, a member of the U.S. Court of Appeals for the D.C. Circuit since 1980, wrote an opinion in 1988 overturning an FCC policy designed to "channel" indecent programs to the "safe harbor" hours of midnight to 6 a.m.

On another front, however, the nominee may disappoint broadcasters. In 1985 she signed an appellate opinion declaring must-carry rules unconstitutional.

Several media lawyers said they expected her nomination would be confirmed by the Senate.

Ginsburg's indecency opinion came after the FCC had unveiled plans for tougher enforcement of its indecency rules.

Prior to 1987, FCC enforcement mostly focused on stations that aired one of the "seven dirty words" made famous in a monologue by comedian George Carlin and that were broadcast between the hours of 10 p.m. and 6 a.m.

In 1987, the FCC broadened its indecency crackdown by considering not just seven profanities, but also whether program themes contained innuendo considered "too racy" or suggestive for an audience that might

include children. The new policy also cut back to midnight-6 a.m. the safe period during which broadcasters could legally channel "indecent" programs.

In a 3-0 decision written by Ginsburg, the D.C. court upheld the FCC's right to regulate broadcasts of questionable content, but ordered the commission to better justify its rule limiting such programming to midnight-6 a.m. The FCC needed to "allow scope for the First Amendment-shielded freedom and choice of broadcasters and their audiences," wrote Ginsburg.

Ginsburg further wrote that the FCC should have taken into consideration whether children are supervised in the home and prohibited from watching racy programs.

The issue of broadcast standards remains highly unsettled. An attempt by Congress few years ago to pass a round-the-clock ban on "indecent" later was tossed out in court as unconstitutional. Last year, however, Congress passed legislation again limiting the airing of indecent programming to midnight-6 a.m., a decision that is being challenged in court.

Barbara McDowell, a private First Amendment attorney in D.C., called the 1988 case a "great decision" for broadcasters. Ginsburg, per McDowell, has shown "great intellectual ability" and a "great commitment to the First Amendment."

Not all representatives of media organizations share McDowell's praise for Ginsburg, however. Jane Kirtley of the D.C.-based Reporters Committee For Freedom of the Press said Ginsburg has often voted against attempts by the media for government information in Freedom of Information Act cases.

Specifically, Kirtley said she is "troubled" by Ginsburg's vote against allowing the media access to tapes of recorded conversations among astronauts just prior to the Space Shuttle Challenger explosion.

Andy Schwartzman, head of the liberal public-interest law firm Media Access Project in D.C., called Ginsburg "an excellent judge and a fine appointment in the broad sense." However, Schwartzman said he thinks Ginsburg has shown too great a tendency to uphold decisions made by government agencies such as the FCC.

LOAD-DATE: June 15, 1993

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Fresno Bee (California)

July 9, 2010 Friday
FINAL EDITION

SECTION: LOCAL NEWS; Pg. A4

LENGTH: 549 words

HEADLINE: Legal aid program honors late Fresnan

BYLINE: Michael Doyle Bee Washington Bureau

DATELINE: WASHINGTON

BODY:

The late **Barbara McDowell** has inspired an ambitious legal aid program that fits her virtues to a T.

A 1969 graduate of Fresno's Hoover High School, McDowell scaled the heights of the legal profession and then recalibrated her ambitions to represent the indigent. Now, in her name, more attorneys might do the same.

"Her true love was helping people," said **Barbara's** mother, Joyce **McDowell**, who still lives in Fresno. "That is what she did."

Following **Barbara McDowell's** death from brain cancer in January 2009 at age 56, her husband, Jerry Hartman, established the **Barbara McDowell** Pro Bono Legal Initiative at his firm of Drinker, Biddle & Reath. The initiative, which is being coordinated out of the firm's Washington, D.C., office, rallies Drinker, Biddle's attorneys at several of the firm's offices to target systemic legal problems.

A lawsuit filed in May as part of the pro bono initiative challenges Mississippi's death penalty sentencing procedures. The clients are complicated, to say the least. One, Michelle Byrom, ate rat poison for three years and then paid a gunman \$15,000 to kill her abusive husband, a jury found.

But Byrom's initial attorneys were also fatally ineffective, according to the pro bono lawsuit; they failed, for instance, to challenge the admissibility of statements Byrom made while heavily medicated.

"This process in Mississippi is not working," Hartman said. "The lawyers are overworked, and they're really having a tough time representing all of these death row inmates."

Discussions are also under way centering on potential legal challenges to predatory payday loan operations and reforming the District of Columbia's food stamp procedures. Last month, the pro bono campaign earned Hartman an annual "legal champion" award from the National Law Journal.

"It's doing a lot more good even than **Barbara** was able to do," Joyce **McDowell** said.

Barbara McDowell attended California State University, Fresno, for two years after graduating from Hoover, and then attended Yale Law School.

For the big law firm Jones Day, McDowell represented corporate clients like R.J. Reynolds Tobacco Co. and the aerospace giant Northrop Grumman. Their pockets were deep.

McDowell took a pay cut in 1997 to join the U.S. solicitor general's office, where she represented the United States government in 18 oral arguments before the Supreme Court. She then took another pay cut in 2004 to become the appellate advocacy director for the **Legal Aid Society** of the District of Columbia.

After McDowell died, Hartman contemplated how to give meaning to the memory of his late wife.

"The only thing that made sense to me was to pick up and continue a lot of what Barbara did," Hartman said.

Some friends already had contributed in **Barbara McDowell's** name to the Fresno County library. An endowment collected nearly \$200,000 for the D.C. **Legal Aid Society's** new appellate advocacy director. A **Barbara McDowell** Scholarship helps a low-income Washington, D.C., high school graduate.

Finally, Hartman settled on establishing the pro bono initiative. So far, 20 attorneys have devoted an estimated 2,000 work-hours to the program.

"We want to do what we think honors Barbara best," said Drinker, Biddle & Reath attorney Maureen Hardwick.

The reporter can be reached at mdoyle@mcclatchydc.com or (202) 383-0006.

LOAD-DATE: July 11, 2010

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McClatchy Washington Bureau

July 8, 2010 Thursday

LENGTH: 638 words

HEADLINE: Late Fresno native inspires pro bono legal program

BYLINE: Michael Doyle; McClatchy Newspapers

BODY:

WASHINGTON -- The late **Barbara McDowell** has inspired an ambitious legal aid program that fits her virtues to a T.

A 1969 graduate of Fresno's Hoover High School, McDowell scaled the heights of the legal profession and then recalibrated her ambitions to represent the indigent. Now, in her name, more attorneys might do the same.

"Her true love was helping people," said **Barbara's** mother, Joyce **McDowell**, who still lives in Fresno. "That is what she did."

Following **Barbara McDowell's** death from brain cancer in January 2009 at age 56, her husband, Jerry Hartman, established the **Barbara McDowell** Pro Bono Legal Initiative. The initiative rallies attorneys at Hartman's firm of Drinker, Biddle & Reath, targeting systemic legal problems.

A lawsuit filed in May as part of the pro bono initiative challenges Mississippi's death penalty sentencing procedures. The clients are complicated, to say the least. One, Michelle Byrom, ate rat poison for three years and then paid a gunman \$15,000 to kill her abusive husband, a jury found.

But Byrom's initial attorneys were also fatally ineffective, according to the pro bono lawsuit; they failed, for instance, to challenge the admissibility of statements Byrom made while heavily medicated.

Another one of the 16 original clients, 72-year-old Gerald Holland, was executed shortly after the lawsuit was filed. A jury had convicted Holland in 1987 of raping and murdering a 15-year-old girl. The lawsuit contends Holland's previous attorney failed to summon expert witnesses or to adequately challenge the prosecution's witnesses. The lawsuit asserts the failings are inherent in the understaffed Mississippi office that handles post-conviction death penalty cases.

"This process in Mississippi is not working," Hartman said. "The lawyers are overworked, and they're really having a tough time representing all of these death row inmates."

Discussions are also underway centering on potential legal challenges to predatory payday loan operations and reforming the District of Columbia's food stamp procedures. Last month, the pro bono campaign earned Hartman an annual "legal champion" award from the National Law Journal.

"It's doing a lot more good even than **Barbara** was able to do," Joyce **McDowell** said.

Joyce McDowell is now 86. She says she still cries frequently, thinking of her late daughter. But she laughs, too, as she recalls her daughter's legal career.

Barbara McDowell attended Fresno State University for two years after graduating from Hoover, and then attended Yale Law School.

For the big law firm Jones Day, McDowell represented corporate clients like R.J. Reynolds Tobacco Co. and the aerospace giant Northrop Grumman. Their pockets were deep.

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Finally, Hartman settled on establishing the pro bono initiative. So far, 20 attorneys have devoted an estimated 2,000 work-hours to the program, and an additional 40 attorneys have likewise volunteered to help in the future.

"We want to do what we think honors Barbara best," said Drinker, Biddle & Reath attorney Maureen Hardwick.

McClatchy Newspapers 2010

LOAD-DATE: July 8, 2010

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Washington Business Journal (Washington DC)

June 22, 2009 Monday

LENGTH: 3926 words

HEADLINE: People on the Move: June 22

BODY:

A weekly roundup of senior-level executive appointments in Greater Washington. For more People on the Move, check out the Washington Business Journal's print edition each week. Send announcements to

washingtonbusinessleads@bizjournals.com

Architecture

Stephanie Williamson has been named director of marketing and business development with Matrix Design Cos. in the Matrix Settles office in Arlington.

CORE Architecture & Design in D.C. named Brian Judis senior project manager for its hospitality practice. Judis brings 15 years of experience managing large hospitality projects to the CORE team. Most recently associated with Host Hotels & Resorts Inc., where he was the director of capital expenditures, Judis implemented capital investment projects upwards of \$70 million annually and was the lead manager for the design and construction of numerous hotel projects throughout the U.S. Judis has worked with a wide range of hotel brands including, but not limited to, Marriott, Swisshotel, Embassy Suites, Hyatt, Four Seasons, and Ritz-Carlton. Recently, he completed the renovation to the lobby, rotunda bar and restaurant of the Philadelphia Marriott Downtown. Other recent projects include the management of the design and construction at the Hyatt Capitol Hill, JW Marriott, Key Bridge Marriott, Four Seasons Philadelphia, and Ritz-Carlton Tysons Corner.

Associations & Nonprofits

Scott Boos, senior policy adviser to Sen. Arlen Specter, D-Pa., has been named the new deputy director of the Alliance for American Manufacturing. Boos has more than seven years of legislative and policy experience gained during his tenure in Specter's office and as staff director of the U.S. Senate Steel Caucus. In the Senate, Boos focused on a broad range of issues including manufacturing, trade, climate change, veterans, budget, appropriations, tax, telecom, housing, financial services and other business-related issues. As staff director of the bipartisan U.S. Senate Steel Caucus, he worked to promote the health and stability of the domestic steel industry, as well as the interests of its workforce.

The **Legal Aid Society** of D.C. named Bonnie I. Robin-Vergeer as director of the **Barbara McDowell** Appellate Advocacy Project. She is an experienced appellate litigator who comes to Legal Aid after nine years at Public Citizen Litigation Group, where she made three U.S. Supreme Court arguments and numerous others before appellate courts throughout the country in cases involving the First Amendment, access to the courts, and consumer health and safety, among other issues. Prior to her position at Public Citizen, she worked for then-Sen. Joseph R. Biden Jr. on the reauthorization of the Violence Against Women Act in 2000 and was an associate at the law firm of Zuckerman Spaeder LLP and a teaching fellow at the Georgetown University Law Center Appellate Litigation Clinic.

The United Negro College Fund in Fairfax named Tiffany Singleton to the organization's newly created position of director of social entrepreneurship programs. Singleton will be responsible for overseeing the design, development and implementation of UNCF social entrepreneurship programs, while engaging stakeholders to develop a multiyear strategy for introducing a greater number of young African Americans to social entrepreneurship - the application of business management practices and innovation to social reform efforts. In addition to overseeing the design and implementation of UNCF social entrepreneurship programs, Singleton will cultivate and sustain strategic partnerships and collaborations with leading social entrepreneurs and their organizations, and organize structured discussions with key stakeholders, ultimately establishing a national advisory committee of social entrepreneurs, academic, and social venture philanthropists who can provide ongoing guidance to UNCF.

Banking & Finance

BB&T has promoted Paul McManus to assistant vice president. McManus, who joined the bank in 2006, is a financial center leader at 1470 Rockville Pike.

Francis P. Nelson has been promoted to administrative vice president at M&T Bank. Nelson joined M&T in 1992. He is responsible for leading and managing a retail sales and operations team for the Prince George's County region.

The National Institutes of Health Federal Credit Union in Rockville has named David E. Perkins as its new chief technology officer. Perkins joins NIHFCU's newly appointed CEO Juli Anne Callis to lead the credit union's renewed focus on technologic innovation and delivery. Perkins previously worked at State Employees Credit Union. Over a 13-year career at SECU, with the last five as CIO, Perkins' accomplishments include the completion of two core conversions, implementation of new loan origination, online banking and collection

systems and the migration of new software.

Cardinal Bank announced the promotions of Andrew J. Peden to senior vice president, Katie L. Golden to vice president and James N. Estep to assistant vice president.

Peden will oversee the relationship management of developers and real estate investors, with a primary focus on acquisition, construction financing and commercial development, including special use properties such as golf courses and churches. He began his lending career at Cardinal Bank in 2000 as a credit analyst.

Golden will continue to oversee the relationship management of builders and developers, primarily in the areas of commercial development, project financing, acquisitions and client development. Golden joined Cardinal Bank in 2004 in real estate administration and currently manages the lending support unit for the commercial real estate group.

Estep remains dedicated to small business lending, SBA guaranteed lending and business development. Estep began his financial services career at Cardinal Bank in 2004 in retail lending.

Communications

C. Fox Communications in Silver Spring named Tina McCormack as senior public relations associate, and Julie Feldman as public relations associate.

Levick Strategic Communications in D.C. named David W. Whitmore as chief operating officer and general counsel. Whitmore comes to Levick with more than 25 years of financial and operational experience. He has spent the lion's share of his career in the communications industry, working with public relations, public affairs, lobbying and advertising firms. Before joining Levick, Whitmore was executive vice president of Racepoint Group in D.C. with operational responsibility for the firm's public affairs, government relations, crisis management, and issues management practice groups. Prior to Racepoint, Whitmore provided communications and management counsel to numerous clients in D.C., Dubai and Abu Dhabi. At Qorvis Communications, Whitmore variously served as executive vice president, chief financial officer, chief operating officer and general counsel.

Construction

Truland Systems Corp. announced the hiring of Brian Brobst as vice president of business development in Reston. Brobst, a 20-plus year engineering and construction industry veteran, will be charged with expanding the firm's presence in the high-density power and computing markets, inclusive of finance, telecommunications, commercial data centers and government agencies. Brobst was previously employed by Hewlett Packard as critical facility services principal. Prior to that, he served as principal and Eastern region director of business development for EYP Mission Critical Facilities Inc.

Education

University of Phoenix named Cyndie Shadow as state vice president with oversight of campus operations for D.C., Delaware and Maryland. Shadow currently serves as campus director for the D.C. and Delaware campuses. The university also has a campus location in Columbia, Md., and three learning centers located in Greenbelt, Rockville and Timonium, Md. Prior to joining the D.C. campus as campus director in 2007, Shadow served as director of academic affairs for the University's Maryland campus, as well as campus college chair for that campus' School of Undergraduate Business and Management. Her background and experience also involves several years as a senior system design associate for InterData Corp. of Sanibel, Fla.

Sam Ortiz has been named campus director at The Art Institute of Washington - Northern Virginia in Sterling.

Engineering

Engineering consulting firm Greenhome & O'Mara hired Mina L. Clark as a new federal programs project director. Clark will manage large public sector projects for G&O's growing federal programs division. Clark has 20 years of experience in domestic and European projects, and has administered contracts for the U.S. government and as an industry manager. She has worked in military, government and corporate engineering environments.

Hospitality

The Fairfax at Embassy Row announced that David F. Bodette has joined the hotel and its Jockey Club restaurant as assistant general manager. Bodette has been involved with four- and five-star diamond hotels for more than a decade, including food and beverage management positions with a number of Ritz-Carlton properties across the U.S. In his new role, Bodette will be responsible for food and beverage management and related day-to-day operations for the Fairfax at Embassy Row, The Jockey Club and The Fairfax Lounge.

Health care

Joseph S. Skoloff joins Nova Medical's team of experts in Ashburn to lead the facility's pediatric division as the newest member of this integrative medical group. Board-certified in 1976 and then again, voluntarily, in 1988, Skoloff has been a pediatrician in Loudoun County for more than 30 years. Skoloff currently holds positions as assistant clinical professor of pediatrics at the medical schools of Georgetown, George Washington and the University of Virginia. He is a past vice chairman of the department of pediatrics and chairman of the infection control committee at the Inova Loudoun Medical Center. Prior to joining Nova Medical, Skoloff, served as chairman of the department of pediatrics at U.S. Air Force Hospital, Robbins AFB, achieved the rank of major, and entered a two-year pediatric cardiology fellowship at the Children's Hospital of Philadelphia.

WellNet Healthcare, a health care technology company in Bethesda, announced the appointment of Chris Kaiser as sales executive for the mid-Atlantic territory and Jay Thompson as sales executive for the Northeast territory. Kaiser and Thompson will be responsible for selling Healthcare Performance Management software to companies that provide and pay for employee health benefits. Prior to joining WellNet, Kaiser spent time in a territory sales role with Vocus Inc. Previously, he was with the Corporate Executive Board in Arlington. Thompson most recently worked for the Corporate Executive Board as a research consultant.

Law

Vedder Price PC announced that Ajay A. Jagtiani, Mark J. Gutttag and David J. Lanzotti will join the firm's intellectual property practice in D.C. Jagtiani has nearly 20 years of experience in all phases of patent prosecution, including patentability, validity and infringement opinions, procurement of domestic and foreign patents, client counseling, licensing and use agreement preparation and negotiation, and the protection and valuation of intellectual property in mergers and acquisitions.

Gutttag will become of counsel to the firm and Lanzotti will be an associate in the group. Jagtiani, Gutttag and Lanzotti are registered to practice with the U.S. Patent and Trademark Office. Prior to joining Vedder Price, they were with the law firm Jagtiani & Gutttag in Fairfax.

Buchanan Ingersoll & Rooney PC announced a change in leadership in the firm's Alexandria office. Intellectual property shareholder Robert G. Mukai has been named office head. Mukai takes the place of fellow intellectual property shareholder William C. Rowland, who was recently elected to serve on the firm's advisory committee and, therefore, has stepped down from head of the office. Mukai formerly served on the Advisory Committee; however, his term recently expired. Mukai focuses his practice on polymer chemistry including biodegradable polymers, synthetic fibers, petroleum chemistry, health care technology, photographic and lithographic chemistry, solvent-based and solvent-less coating compositions, metallurgy and inorganic chemistry.

Michael A. Bell, Laura E. Jordan and Alfred L. Scanlan Jr. joined Jackson & Campbell PC's business law and general litigation groups in D.C. as directors.

Sutherland Asbill & Brennan LLP announced that J. Page Scully has joined the firm in D.C. as an associate in its state and local tax group. Page's addition expands Sutherland's fast-growing State Tax Practice to 20 attorneys dedicated full-time to advising clients on state and local tax matters. A former associate with McDermott Will & Emery LLP in Chicago, Scully has experience in combined reporting, allocation and apportionment, realty transfer tax, Internet and e-commerce matters, unclaimed property and federal and state constitutional issues.

Jennings, Strouss & Salmon Plc announced that Daniel E. Cooper has joined the firm's energy practice in the D.C. office. Cooper is a non-lawyer consulting engineer in the firm's energy practice group. He is a registered professional engineer focusing his consulting work on electric utility matters, including economic and feasibility analysis, oversight of electric generating resource operations and development, power supply and transmission contracts, oversight of bulk power operations, compliance with environmental regulations and

reliability standards, and review and oversight of transmission and bulk electric power contracts. Cooper joined the firm after serving with the Michigan Public Power Agency for more than 16 years. Prior to joining Michigan Public Power Agency, Dan worked for 12 years for the firm of R. W. Beck.

Bracewell & Giuliani LLP announced that Valyncia R. Simmons has joined the firm's D.C. office as an associate in its trial practice. Simmons' practice focuses on trademark enforcement and litigation, as well as matters relating to unfair competition and copyrighted material. In addition to litigation, Simmons maintains trademark portfolios comprised of both foreign and domestic trademark prosecution matters; handles opposition and cancellation proceedings before the U.S. Trademark Trial and Appeal Board; acquires domain names through implementation of the Uniform Domain-Name Dispute-Resolution Policy; and analyzes trademark search reports and provides clearance opinions.

Leslie Nicholson, immediate past general counsel of the U.S. General Services Administration, joined Pillsbury Winthrop Shaw Pittman LLP as senior counsel in the firm's litigation practice. It is a homecoming for Nicholson, who was one of the first three associates at Pillsbury predecessor firm Shaw Pittman when he began in private practice in 1968. He spent 28 years at the firm, six as leader of its litigation practice. After earning his J.D. from Vanderbilt University School of Law in 1965, Nicholson joined the U.S. Department of Justice as a member of the Attorney General's Honors Program, where he worked under two assistant attorneys general for the civil division before joining Shaw Pittman. During his nearly three decades with the firm, he personally handled cases in 37 states, involving bankruptcy, securities, ERISA, construction claims, complex commercial and real estate disputes, environmental compliance, aircraft sales and leases, class actions and employment law issues. In 1996, Nicholson was named executive vice president and general counsel to Chevy Chase Bank, where he created and managed the legal department of the \$12 billion financial institution, led government relations efforts at the federal and state level, and supervised and administered multiple other bank functions. A compliance program developed under his leadership was used as a model of excellence by the Office of Thrift Supervision. In 2002, Nicholson co-founded investment fund Kenwood Capital, LLC, where he was President and CEO until returning to public service at the GSA in 2008.

Seyfarth Shaw LLP announced that Minh N. Vu has joined the firm's D.C. office as a partner in the labor and employment department. She was previously a partner at Epstein Becker & Green PC, where she served as co-chair of the firm's disability law group. Vu is an experienced litigator with special expertise in handling disability discrimination lawsuits brought under the Americans with Disabilities Act (ADA) and other civil rights laws. Since returning to the private sector, Vu has defended employers and public accommodations in a variety of complex disability and employment law matters. Vu also devotes a substantial portion of her practice to employment law litigation and counseling. She has defended employers against lawsuits and government investigations brought under anti-discrimination laws such as Title VII, the D.C. Human Rights Act, and the FMLA.

Hogan & Hartson LLP announced that former U.S. Trade Representative General Counsel Warren H. Maruyama has rejoined the firm as a partner in the D.C. office. He will resume his practice in the international trade law and policy group of the firm. As USTR General Counsel, Maruyama oversaw World Trade Organization and Free Trade Agreement disputes, worked with congressional leaders and other executive branch agencies on trade legislation, U.S. FTA agreements, and the WTO Doha Round. Maruyama played a key role in negotiating the "May 10 Bipartisan Agreement" between the Bush administration and Democratic congressional leadership to address the labor and environmental provisions of U.S. FTAs.

Roger E. Smith has joined Schiff Hardin LLP as a partner in the energy and public utilities group in the D.C. office from Troutman Sanders LLP where he was a partner. Smith concentrates his practice in energy regulation, litigation and transactions. He represents investor-owned utilities, independent system operators and regional transmission organizations, electric distribution companies and power marketers.

Real estate

Kevin Spurlock has joined Penzance, where he will manage construction, design, and development for Penzance-owned projects as well as for tenants and third-party groups. Spurlock comes to Penzance from Mid-Atlantic Realty Partners, where he was senior vice president for construction. In his 30 years on the job he has worked in senior positions for many of the major players in the metro area, including Jones Lang LaSalle, Lincoln Property Co., Lerner Corp. and Sigal Construction. His project experience includes the Washington Capitals training facility in Arlington, renovation of 1310 N. Court House, Cox Communications Regional Headquarters in Herndon, Dulles Town Center Regional Mall, 1750 Tysons Boulevard in McLean, and the

Nuclear Regulatory Commission in North Bethesda, to name a few.

Jeffery Groves has joined EDGE Commercial's landlord and tenant advisory practice for Maryland. Groves has seven years of experience.

Gates Hudson announced that Joe Schechtel has joined the company as senior vice president of its commercial division. He will be responsible for a team of professionals providing asset management, property management and leasing services to the company's 3.7 million square foot commercial real estate portfolio in the Washington area. Schechtel brings with him more than 20 years of commercial real estate experience, including the last 14 years with Cushman & Wakefield, where he was director of client solutions and responsible for the firm's third-party property management, facility management and project management services throughout the Washington and Baltimore areas.

Dave Jones joined wife Pam Jones' Loudoun-based marketing team at Long & Foster as comprehensive buyer rep in Ashburn.

Technology

Northrop Grumman Corp. in Reston appointed George Peach Taylor Jr., vice president and chief medical officer, and Amy King, vice president of health information technology programs for the company's information systems sector. As vice president and chief medical officer, Taylor will provide strategic direction for Northrop Grumman's health, homeland security, biomedical sciences and human system integration business. Previously, Taylor was vice president of Health IT Programs. Taylor joined Northrop Grumman in 2008 from the Washington federal practice of PricewaterhouseCoopers, LLP, where he was a senior managing director following his 2006 retirement as a lieutenant general and surgeon general of the U.S. Air Force.

As vice president of health IT programs, King will oversee Northrop Grumman's overall health business, which provides mission-critical enterprisewide health applications, interoperable architecture, and large-scale systems integration and engineering to leading health organizations. Previously, she was director of Healthcare Systems Management. King has more than 25 years of experience with civilian and defense agencies in the management, analysis, design, development and implementation of large-scale automated financial, health and related administrative information systems using mainframe and Web-based technology. Prior to joining Northrop Grumman in 2006, she was vice president of the Public Sector Health Account Group at CGI-AMS.

Northrop Grumman Corp. in Reston also named Cheryl L. Janey vice president of operations for the information systems sector's civil systems division. Janey will oversee the division's financial growth and operational objectives within the federal-civil, and state and local markets. She will also lead civil system's integrated planning process, leading and managing special projects and initiatives. Janey has nearly 30 years of experience in the information technology industry. Most recently, she was president of civil programs for Harris Corp., supporting the technology needs of federal agencies. Prior to joining Harris, she spent almost six years in various leadership roles with Northrop Grumman supporting the company's commercial, state and local business.

Reston-based Global InfoTek Inc. announced that Chip Block has joined the company as vice president of strategic development. He will be responsible for strategic planning, customer relationships, and leading the growth of GITI into new market sectors. Prior to joining GITI, Block was director of Defense Advanced Solutions for McDonald Bradley (MBI) / ManTech International. Before MBI, he was president and chief technology officer for Spearhead Innovations.

XO Communications in Herndon announced that Laura W. Thomas has been promoted to chief financial officer. In her role as CFO, Thomas will lead XO Communications' financial strategy including all reporting, auditing, taxation and investor relations functions. She will work with the company's senior executive team to develop and implement the company's long-term business strategy. Thomas brings more than 30 years of experience in finance and telecommunications to the position. During the past nine years, Thomas served as vice president of finance for XO. Prior to joining XO, Thomas was the vice president of finance at Concert Communications, a joint venture between AT&T and British Telecom. In this role, she served as acting CFO for six months and managed all revenue and telecommunications accounting functions. She also served as director of finance at MCI Communications where she directed revenue reporting and analysis, as well as managed investor relations and financial planning across all of MCI's business units.

LOAD-DATE: June 22, 2009

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Fresno Bee (California)

April 18, 2009 Saturday
FINAL EDITION

SECTION: LOCAL NEWS; Pg. B5

LENGTH: 503 words

HEADLINE: Fight for social justice kept alive;
Pro bono legal work honors former Fresno woman after her death.

BYLINE: Michael Doyle Bee Washington Bureau

DATELINE: WASHINGTON

BODY:

The late **Barbara McDowell** went from the San Joaquin Valley to the legal summit and into the hearts of those who knew her.

Now, the former Fresno resident who passed away in January is being honored.

A new national pro bono campaign established in McDowell's name will be sustaining her commitment to using the law as a tool of social justice.

"From the time she was a Girl Scout, doing things for the poor, she was helping people," said her mother, Joyce McDowell, who lives in Fresno. "Her whole ambition was helping people, so she would care deeply about this."

The **Barbara McDowell** Pro Bono Initiative unveiled this week by Drinker, Biddle & Reath will give the Philadelphia-based firm's lawyers time and credit for doing unpaid legal work. Echoing McDowell's own practice, the pro bono attorneys will seek cases of more than singular significance.

As appellate advocacy director at the **Legal Aid Society** of the District of Columbia, for instance, McDowell had represented poor clients threatened with eviction. Her goal was to protect not only the individual client but others finding themselves in similar situations.

The new pro bono initiative will do the same.

"We will be finding cases that have precedential value, that will change many people's lives," said Drinker Biddle partner Jerry Hartman, McDowell's husband, who will head the initiative.

After attending Fresno State for two years, McDowell transferred to George Washington University. She graduated from Yale Law School.

Representing the U.S. government, McDowell argued 18 cases before the U.S. Supreme Court. Some happened to be acutely relevant for the San Joaquin Valley, as when she defended an agricultural promotion program.

McDowell served in the Solicitor General's Office from 1997 to 2004, when she left to establish the **Legal Aid Society's** appellate program.

McDowell might have instead cashed in her high-level government experience at a blue-chip law firm.

Of course, McDowell acknowledged at the time, Hartman's own successful corporate law practice made it easier for her to start representing the poor.

Diagnosed with brain cancer in late 2007, McDowell continued working at the **Legal Aid Society** for as long as she could. Finally, her mother said, McDowell realized around Thanksgiving 2008 that it was time to step down.

"She was fighting so hard," said Joyce **McDowell**, who is 85.

Barbara McDowell funded a social justice program at her church. She also left money to endow the appellate advocacy position she formerly held at the **Legal Aid Society**.

The new pro bono initiative, though, came together only after her passing.

Hartman said he and other Drinker Biddle attorneys are now casting a net for "five strong cases" to kick off the program.

Participating attorneys will be freed up to work on them -- anything from death-penalty challenges to immigration and housing.

"We'll be looking for a resolution," Hartman said, "that will be to the advantage of the underprivileged."

The reporter can be reached at mdoyle@mcclatchydc.com or (202) 383-0006.

GRAPHIC: The late **Barbara McDowell** left a high-power post to fight for poor clients.
SPECIAL TO THE BEE

LOAD-DATE: April 20, 2009

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Copyright 2009 American City Business Journals, Inc.
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Washington Business Journal (Washington DC)

April 16, 2009 Thursday

LENGTH: 221 words

HEADLINE: Drinker Biddle & Reath launches pro bono initiative

BYLINE: Tierney Plumb

BODY:

Drinker Biddle & Reath LLP has launched a pro bono initiative that continues the social justice work of the late wife of Jerry Hartman, a D.C. partner.

During the final four years of her life, she created and directed the appellate project at the D.C. **Legal Aid Society** where she represented the poor in areas of housing, public benefits and domestic violence. She also worked with such local businesses and organizations as Shaw Community Ministry and Westmoreland Congregational United Church of Christ in Bethesda.

The **Barbara McDowell** Pro Bono Initiative "will enhance the economic, health, social condition and civil liberties of low income and disadvantaged people through litigation, legislative and administrative rule-making engagements across a broad range of subject matters, including low-income housing, political asylum, domestic violence, human trafficking, children's rights, immigration and disparities in community services, and

opportunities for economic development," said Hartman, who will direct the initiative.

She was also a partner at Jones Day and then served as an assistant to the Solicitor General in the Department of Justice from 1997 to 2004.

The **Legal Aid Society** named its appellate advocacy program after McDowell, who died of brain cancer in January, and formed a supporting endowment in her name.

LOAD-DATE: April 16, 2009

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Distributed by McClatchy-Tribune News Service

January 8, 2009 Thursday

SECTION: WASHINGTON DATELINE

ACC-NO: 20090108-BC-MCDOWELL-APPRECIATION

LENGTH: 872 words

HEADLINE: From Supreme Court to eviction cases, top lawyer had last word

BYLINE: By Michael Doyle, McClatchy Newspapers

DATELINE: WASHINGTON

BODY:

WASHINGTON _ Few lawyers are good enough to argue before the U.S. Supreme Court. The late **Barbara McDowell** did it twice in one day.

As one of the elite cadre of lawyers in the U.S. solicitor general's office, McDowell argued 18 cases before the Supreme Court. The numbers _ two cases in a day, 18 overall _ represent, but cannot capture, McDowell's sterling reputation.

"Barb had an amazingly sharp, analytical mind," recalled University of Pennsylvania law professor Sarah Barringer Gordon. "Barb was a superb editor and writer, partly from her years working as a journalist, and partly because she loved the give and take of really fine persuasive writing and argument."

On Friday, 14 months after she was diagnosed with brain cancer, McDowell died at her northern Virginia home. She was 56. Now, preparing for a Saturday memorial service to be held in suburban Maryland, McDowell's friends must juggle grief and celebration.

They cite numbers, such as the roughly 50 cases McDowell argued in recent years as appellate advocacy director for the **Legal Aid Society** of the District of Columbia. They recall choices, such as McDowell's mid-life decision to represent the poor instead of the powerful. They summon memories, painful and sweet.

"She worked harder than anyone else," said Gordon, who first met McDowell in the mid-1980s at Yale Law School, and "she was very funny, often with a wickedly observant sense of humor that delighted us all."

Another friend, now a prominent Supreme Court practitioner, recalled how McDowell always "completely mastered the law and the facts of the case she was arguing." However, this former colleague from the solicitor general's office also asked not to be named, saying it was "just too sad for me" to be talking on the record.

Born in Oakland, Calif., McDowell was raised in Fresno, Calif., where her mother, Joyce, still lives. McDowell embraced politics early, helping run the 1972 Fresno County campaign for Democratic presidential nominee George McGovern. Pointed toward government, she transferred from Fresno State to George Washington University in Washington.

"I was one of the few people who'd cut class to go to a (Fresno County) Board of Supervisors meeting," McDowell once said of her high school career.

McDowell steered her career in a way that others wouldn't.

She worked as an editor for several years after college, before entering Yale Law School. She went into private practice, but then took a pay cut to join the solicitor general's office in 1997. She took another pay cut to join the **legal aid society** in 2004.

"I could be making maybe 10 times what I make here," McDowell said last year, gesturing around her spare downtown Washington office.

McDowell added that husband Jerry Hartman's own successful legal practice made her own virtuous career choice easier. Both were divorced when they married eight years ago. The couple had no children.

McDowell's legal aid clients could be trying, her courtroom victories poignant. In 2006, for instance, McDowell and her colleague Julie Becker prevailed in a case that kept District of Columbia resident Raesheeda Ball from being evicted after someone else's guns and drugs were found in her apartment.

McDowell likewise helped keep D.C. tenant Evelyn Douglas, who lived on \$531 a month, from being evicted from an apartment she had difficulty maintaining because of her mental illness.

Such advocacy can be more art than science. However, it's still science. The two Supreme Court cases successfully argued by McDowell on Dec. 5, 2001, for instance, were painfully technical telecommunications controversies.

"The federal district courts have subject matter jurisdiction over cases contending that a state public utility commission has construed and enforced an interconnection agreement in a manner contrary to federal law," McDowell declared at the start of one case, the transcript shows. "That's true whether one looks specifically at section 252(e)(6) of the 1996 act, or more generally."

Then, inevitably, a justice interrupted with a question. These constant questions during oral arguments underscore the need for intense preparation, deft footwork and an ability to handle the bizarrely hypothetical.

"I mean, suppose I am a member of the People for the Ethical Treatment of Mushrooms," Justice Antonin Scalia mused during another 2001 court case. "And I think that mushrooms should not be eaten at all. Can I be compelled to take part in this advertising?"

"Well, then," McDowell replied, "presumably you wouldn't be a mushroom producer and you wouldn't be covered by this statute."

"Oh no," said Scalia, who generally likes to have the last word. "I produce them to make them happy. I just don't harvest them."

Unhesitatingly, McDowell countered Scalia's question. She started to elaborate, and then faced the next question, and one after that, and yet another, until her job was done.

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LOAD-DATE: January 9, 2009

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Fresno Bee (California)

January 6, 2009 Tuesday
FINAL EDITION

SECTION: MAIN NEWS; Pg. A1

LENGTH: 770 words

HEADLINE: Hoover High grad remembered as dedicated, brilliant lawyer

BYLINE: Michael Doyle Bee Washington Bureau

DATELINE: WASHINGTON

BODY:

Few lawyers are good enough to argue before the U.S. Supreme Court. The late **Barbara McDowell**, a 1969 graduate of Fresno's Hoover High School, did it twice in one day.

As one of the elite cadre of lawyers in the U.S. Solicitor General's Office, McDowell argued 18 cases before the Supreme Court.

The numbers -- two cases in a day, 18 overall -- are proxies. They represent, but cannot capture, McDowell's sterling reputation.

"Barb had an amazingly sharp, analytical mind," recalled University of Pennsylvania law professor Sarah Barringer Gordon. "Barb was a superb editor and writer, partly from her years working as a journalist, and partly because she loved the give and take of really fine persuasive writing and argument."

On Friday, 14 months after she was diagnosed with brain cancer, McDowell died in her northern Virginia home. She was 56. Now, preparing for a Saturday memorial service to be held in suburban Maryland, McDowell's friends must juggle grief with celebration.

They cite numbers, like the roughly 50 cases McDowell argued in recent years as appellate advocacy director for the **Legal Aid Society** of the District of Columbia. They recall choices, like McDowell's midlife decision to represent the poor instead of the powerful. They summon memories, painful and sweet.

"She worked harder than anyone else," said Gordon, who first met McDowell in the mid-1980s at Yale Law School, and "she was very funny, often with a wickedly observant sense of humor that delighted us all."

McDowell was born in Oakland and raised in Fresno, where her mother, Joyce, still lives. McDowell embraced politics early, helping run the 1972 Fresno County campaign for Democratic presidential nominee George McGovern while in college. Pointed toward government, she transferred from California State University, Fresno, to George Washington University in Washington.

"I was one of the few people who'd cut class to go to a [Fresno County] Board of Supervisors meeting," McDowell once said of her high school career.

McDowell worked as an editor for several years after college before entering Yale Law School. She went into lucrative private practice, but then took a pay cut to join the Solicitor General's Office in 1997. The solicitor general is a presidential appointee whose office -- filled mostly with career professionals outside the patronage realm -- is both a gatekeeper and an advocate. It determines which cases to appeal when the government loses and speaks for the federal government before the Supreme Court.

McDowell took another pay cut to join the **legal aid society** in 2004.

"I could be making maybe 10 times what I make here," McDowell said last year, gesturing around her spare downtown Washington office.

McDowell added that husband Jerry Hartman's successful legal practice made her own career choice easier. Both were divorced when they married eight years ago; the couple had no children.

As a legal-aid lawyer, McDowell advocated for people who lived in the District of Columbia. In 2006, for instance, McDowell and colleague Julie Becker prevailed in a case that kept Raesheeda Ball from being evicted after someone else's guns and drugs were found in her apartment.

McDowell likewise helped keep D.C. tenant Evelyn Douglas, who survived on \$531 a month, from being evicted from an apartment she had difficulty maintaining because of her mental illness.

Those cases were down-to-earth compared with much of her work before the Supreme Court. The two cases successfully argued by McDowell on Dec. 5, 2001, for instance, were painfully technical telecommunications controversies.

Constant questions during oral arguments before the Supreme Court underscore the need for intense preparation, deft footwork and an ability to handle the bizarrely hypothetical.

"I mean, suppose I am a member of the People for the Ethical Treatment of Mushrooms," Justice Antonin Scalia mused during another 2001 court case when McDowell defended the ability of farm groups to compel payment of assessments to fund industry advertising. "And I think that mushrooms should not be eaten at all. Can I be compelled to take part in this advertising?"

"Well, then," McDowell replied, "presumably you wouldn't be a mushroom producer and you wouldn't be covered by this statute."

"Oh no," said Scalia, who generally likes the last word. "I produce them to make them happy. I just don't harvest them."

Unhesitatingly, McDowell countered Scalia's question. She started to elaborate, and then faced the next question, and one after that, and yet another, until her job was done.

The reporter can be reached at mdoyle@mcclatchydc.com or (202) 383-0006.

GRAPHIC: Barbara McDowell

LOAD-DATE: January 6, 2009

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The Fresno Bee Editorial Opinion Blog

January 5, 2009 Monday 4:30 PM EST

LENGTH: 157 words

HEADLINE: Barbara McDowell

BYLINE: Russ Minick

BODY:

Jan. 5, 2009 (The Fresno Bee delivered by Newstex) -- This is sad: An old classmate, **Barbara**

McDowell, has died in Washington. Barbara was one of the valedictorians of our graduating class at Hoover High School in 1969, and went on to an illustrious legal career in Washington, D.C. She joined a high-powered law firm there, then worked for Janet Reno during the Clinton administration, arguing cases before the Supreme Court. When Clinton left office, Barbara could have gone back to a lucrative private career. Instead, she joined the D.C. **Legal Aid Society** and argued dozens of cases on behalf of the poor. Barbara had a bachelor's degree in journalism and worked as an editor in New York for the United Features Syndicate before she went to Yale Law School and began her legal career. She died of brain cancer last Friday. My thanks to Phil Fullerton for being the reluctant bearer of such sad news. Newstex ID: FR-2028-30863221

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The Washington Post

January 4, 2009 Sunday
Regional Edition

SECTION: METRO; Pg. C07

DISTRIBUTION: Maryland

LENGTH: 396 words

HEADLINE: **Barbara McDowell**; Leader In Public Interest Advocacy

BODY:

Barbara McDowell, 56, a lawyer who argued many cases before the U.S. Supreme Court and who later became a national leader in public interest advocacy as director of the appellate project of the D.C. **Legal Aid Society**, died Jan. 2 of brain cancer at her home in Falls Church.

From 1997 to 2004, Ms. McDowell was an assistant to the solicitor general in the Justice Department. She argued 18 cases before the Supreme Court, including two in one day, and was the principal author of the legal briefs in more than a dozen other cases.

She once won a Supreme Court case against Chief Justice John G. Roberts Jr., then in private practice, that resulted in improved retirement benefits for coal miners.

In 2004, Ms. McDowell joined the D.C. **Legal Aid Society** and established its Appellate Advocacy Project. She argued about 50 cases related to issues of poverty law in the D.C. Court of Appeals and won significant legal victories involving housing, public benefits, domestic violence and the rights of the poor.

The **Legal Aid Society** has named its appellate advocacy program in Ms. McDowell's honor and has established an endowment in her name.

In March, Roberts presented Ms. McDowell with the Rex E. Lee Advocacy and Public Service Award, a national honor recognizing the outstanding appellate advocate of the year.

Barbara Bea McDowell was born in Oakland, Calif., and grew up in Fresno, Calif. After graduating from George Washington University in 1974 with a bachelor's degree in journalism, she spent several years in New York as an editor with United Feature Syndicate.

She graduated from Yale Law School in 1985 and worked as a clerk for Supreme Court Justice Byron R. White. From 1987 to 1997, she was a partner in the Washington office of the Jones Day law firm, representing such clients as the Northrop Grumman and the R.J. Reynolds Tobacco.

Ms. McDowell chaired the board of directors of the Shaw Community Ministry, which provides social services in the District's Shaw neighborhood. She also served on the board of trustees of Westmoreland Congregational United Church of Christ in Bethesda.

She enjoyed running, bicycling and swimming and was a Washington Nationals season ticket holder.

Her marriage to Robert Peck ended in divorce.

Survivors include her husband of eight years, Jerry Hartman of Falls Church; her mother, Joyce McDowell of Fresno; and a brother.

-- Matt Schudel

GRAPHIC: IMAGE; Family Photo; Lawyer **Barbara McDowell**, 56, directed the appellate project of the D.C. **Legal Aid Society**.

LOAD-DATE: January 4, 2009

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January 3, 2009 Saturday 10:20 PM EST

LENGTH: 38 words

HEADLINE: "Friends Mourn Death of **Barbara McDowell** of D.C. **Legal Aid Society**"

BYLINE: Howard Bashman

BODY:

Jan. 3, 2009 (How Appealing delivered by Newstex) -- "Friends Mourn Death of **Barbara McDowell** of D.C. **Legal Aid Society**": Tony Mauro has this post today at "The BLT: The Blog of Legal Times." Newstex ID: HAP-0001-30840369

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