



Minnesota Regional Transit  
Board: Records.

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REGIONAL TRANSIT BOARD

Mears Park Centre  
230 East 5th Street  
St. Paul, Minnesota 55101  
612/292-8789

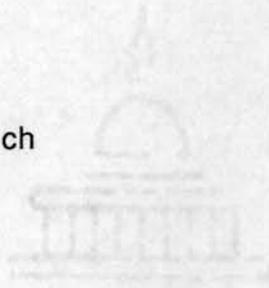
## **SPECIAL MEETING OF THE REGIONAL TRANSIT BOARD**

Monday, May 1, 1989  
Mears Park Centre Chambers  
4:00 p.m.

### **AGENDA**

1. Call to Order and Roll Call
2. Approval of Agenda
3. Regional Transit Board Legislative Program
4. Public Comment
5. Adjourn

Elliott Perovich  
Chairman



HOWARD

INEQUALITY

6

REGIONAL TRANSIT BOARD

CALL SHEET

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Fisher

DATE: 4/25

SUBJECT: Special Board mtg on 5/1

4:00?

MEMBER NAME	Private	Roll	89-11	
Chairman	OK	✓	✓	no
Doris Caranicas H 375-1851	OK	✓	✓	y
Carole Faricy O 224-3460 H 690-3152		✓	✓	y
Ruth Franklin O 755-2880 H 421-1213	OK	✓	✓	y
Alison Fuhr H 920-1566	lw	✓	✓	abs
Rochelle Graves O 348-6114 H 374-5601		✓	✓	y
George Isaacs H 484-7512	out of town	—	—	—
Paul Joyce O 932-2205 (private) H 935-5929	OK	✓	✓	y
Edward Kranz O 333-4500 H 437-2593	OK	✓	✓	y

bc  
fh  
eh  
du  
ls  
hr

May 1, 1989

Regional Transit Board  
Mears Park Centre  
230 East Fifth Street  
St. Paul, MN 55101

Dear Members of the Regional Transit Board:

We are pleased to have the opportunity to present our qualifications to you for consideration for legislative representation. We look forward to discussing what your needs are for these last few days of the legislative session. Although little time remains, it still may be possible to have some impact as the bill relating to the Regional Transit Board considered in conference committee and again on the floor of the House and Senate.

In the attached materials, we have attempted to pull together information that would be useful to you - we've included legislative and firm background information. These materials give you a fair amount of information about our firm and individuals in the firm but I will add some additional information for your consideration.

I am a partner in the firm of Opperman Heins & Paquin and lead its government relations efforts. The chief authors of the bill relating to the Regional Transit Board are both good friends of mine. I have worked closely with Senator Steve Novak on many legislative and political matters. Representative Phil Carruthers is a law school classmate of mine and we have worked on several issues as well.

Tom Satre, a former House Tax Committee staff person, is Opperman Heins & Paquin's lead transportation staff person. Over the last two years, Tom has spent much of his time becoming educated on the issues of transportation, specifically light rail transit. His experience, as a former House staff member with the majority party, enables him to work closely with the current decision makers addressing the issue of the Regional Transit Board.

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Regional Transit Board  
May 1, 1989  
Page Two

I am confident that our firm, led by Tom and I, can represent you well during these last three weeks of the legislative session in attempting to fulfill your legislative agenda. Hopefully, you will weave your mark into the legislation relating to the Regional Transit Board.

At our meeting, we will be happy to answer any questions as well as discuss, if you do decide to retain us, how we can proceed to be your best advocates.

Sincerely,

OPPERMAN HEINS & PAQUIN

H. Theodore Grindal

HTG:at

enclosure

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Opperman Heins & Paquin Proposal to the Regional Transit Board, May 1, 1989.

- Exhibit A: A Perspective of the 1989 LRT/RTB Legislative Proposals.
- Exhibit B: RTB Key Issues in H.F. 1408 and S.F. 1202.
- Exhibit C: OH&P Firm Profile.
- Exhibit D: OH&P State Government Affairs.
- Exhibit E: OH&P Federal Government Relations Team.
- Exhibit F: OH&P Government Affairs Client List.
- Exhibit G: OH&P Speakers Program.
- Exhibit H: OH&P Biography.
- Exhibit I: Selected Media Clips.
- Exhibit J: Proposed Agreement with RTB.

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REASONS FOR H.F. 1408 & S.F. 1202

Action taken in the Minnesota House of Representatives has been directed by the House Speaker, Rep. Robert Vanasek. The bill's chief author, Rep. Phil Carruthers, has stated, "I'm carrying the Speaker's water on this." Speaker Vanasek has indicated dissatisfaction with Hennepin County's flip-flopping regarding financing. His stand is 'if Hennepin County can build and finance the system they've proposed, fine. However, if they need state money for any part of it, including operations, then we had better be certain there is regional coordination'. The thrust, then, of H.F. 1408 is assurance of metro/region-wide coordination of county-developed light rail systems.

The Senate bill's chief author, Sen. Steve Novak, introduced legislation which has as its main purpose preserving the Regional Transit Board. As he stated before the Senate's Government Operations Committee, "Had the Governor recommended funding for the RTB, I wouldn't be before you with this bill!". Sen. Novak has met privately with Governor Perpich in an effort to bring resolve to the issue of LRT legislation and RTB funding (which has now apparently become irrevocably tied together.)

The outcome of initial negotiations between Sen. Novak and Rep. Carruthers indicates there is a willingness, on the part of both legislative chambers, to retain the RTB in one form or another. The board's composition, leadership and ultimate responsibilities are yet to be formally determined.

The current Board could, at this point, still set a focus and direction for the new Board if a plan is determined and implemented. Both authors remain amenable to suggestions and compromise. However, it is imperative that if the RTB would like to influence the outcome of current legislation, that course of action must be set and executed immediately.



COMPARISON

H.F. 1408 & S.F. 1202

*Not the same  
as meeting  
copy*

<u>* = RTB Position</u>	<u>H.F. 1408</u>	<u>S.F. 1202</u>
1. JOINT PLANNING BOARD	YES	NO *
2. RTB PREPARES PLANS	NO *	YES
3. PRELIMINARY REVIEW BY RTB REQUIRED	NO	YES, modified *
4. FINAL RTB APPROVAL (MTC FINAL APPROVAL)	YES * YES	YES * NO
5. PROTECTS FEDERAL GRANT	YES *	YES *
6. RTB MEMBERSHIP	11 Members * 6 elected officials  5 citizens	11 Members 8 elected officials (4 county 4 city) 3 citizens (1 disabled 1 65 yrs +)
7. RTB CHAIR (RTB HAS NO PREFERENCE)	PART-TIME  elected by body 2 per diem	FULL-TIME  Appointed by Governor
8. JOINT POWERS AGR.	YES *	NO (S.F. 488)
9. CONSIDER PREVIOUSLY AGREED TO ASPECTS OF PLANS	YES *	YES *
10. DISTRIBUTOR OF STATE FUNDS	MNDOT	RTB *
11. MTC OPERATES	YES *	YES *
12. TAXING AUTHORITY REMOVED	NO * (RTB FAVORS STATUS QUO)	NO *



**FIRM PROFILE**

Opperman Heins & Paquin is engaged predominantly in sophisticated civil litigation practice and related client counseling. The practice includes business litigation, construction industry cases and securities litigation.

The firm's business and corporate clients come from diverse areas. These clients include award-winning authors and celebrities, business enterprises, banks and savings and loans, trade and industry associations, real estate developers, health care professionals and casualty insurers.

The firm consists of 34 lawyers assisted by an extensive paralegal, computer and support staff. Opperman Heins & Paquin has 25 attorneys engaged primarily in civil litigation in the state and federal courts in Minnesota and in various federal courts throughout the country. Many of the litigation attorneys have served as law clerks for prominent members of the local judiciary including members of the Minnesota Supreme Court, the Minnesota Appellate Court, the United States District Court for the District of Minnesota and the Court of Appeals for the Eighth Circuit.

Major corporations which have retained OH&P for litigation matters include: West Publishing Company, Kawasaki Motors Corp., U.S.A., The Hartz Mountain Corporation, Holly Sugar Corporation, Crum & Forster Insurance group, First Bank Systems, Eagle-Picher Industries, Inc., The Hartford Life and Accident Insurance Company, Consolidated Grain & Barge Company, Aderans Co. Ltd. of Tokyo, Japan, and National Hockey League.

The firm provides governmental relations services to a number of companies and organizations, including Shearson Lehman Hutton, Mayo Foundation, Siemens Energy & Automation, Inc., National Computer Systems, Minnesota Public Radio, Minnesota Academy of Ophthalmology, Minnesota Society of Anesthesiologists, The Southland Corporation, Minnesota Veterinary Medical Association and West Publishing Company, among many others.

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**THE OPPERMAN HEINS & PAQUIN STATE GOVERNMENT AFFAIRS TEAM**

Opperman Heins & Paquin Government Affairs Team consists of 11 individuals with extensive experience in both Republican and Democratic politics. Created in 1984, OH&P's Government Affairs Team has already established an impressive record with success stories for clients such as International Multifoods, Shearson Lehman Hutton, Minnesota Medical Association, Minnesota Public Radio, The Southland Corporation (7-11 Stores), Blue Cross and Blue Shield of Minnesota, and many others. More important, OH&P is now universally recognized -- both in and around the State Capitol -- as one of the premier public affairs firms in the state.

From its infancy, the Opperman Heins & Paquin Government Affairs Team has guided its efforts by consistently employing two distinct, but interlocking tools: 1) its solid, substantive knowledge of the issues and, 2) its strong bipartisan political contacts that have been painstakingly developed and nurtured over many years. Indeed, OH&P's commitment to this philosophy has produced a long list of satisfied clients, and has resulted in an unprecedented track record.

As its name suggests, the OH&P Government Affairs Team truly functions as a team. Experience has shown that such an approach is far and away the most effective means of dealing with most government affairs goals. Because each member of the team has his or her own areas and contacts that are particularly strong, all Team members traditionally become involved in specific government affairs projects, under the continuous guidance and direction from a project head. Consequently, OH&P's government affairs clients do not incur the benefits of a single representative, but rather, they are represented by the entire eleven-person staff.

OH&P also has an excellent network of political contacts, many of which have been nurtured for over two decades. In addition, our working relationship with policy-makers from both sides of the aisle is the product of extensive work by members of the OH&P Team on numerous campaigns and political staffs. Finally, the Team's political contacts have been strengthened by thousands of dollars in contributions made annually by OH&P's state and federal political action committees, as well as its individual partners. In fact, OH&P is now one of the largest political contributors in Minnesota. While OH&P does not pretend that public policy can be influenced by political contributions -- nor should it -- OH&P's financial commitment to the political process ensures that Team members have access and are accepted at all levels of government.

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**THE OPPERMAN HEINS & PAQUIN EDGE**

Swift Information And Bulletins

The OH&P Government Affairs Team believes that the client is capable of making wise political judgments only when he or she has a full understanding of the political atmosphere in the state. Once again, our team approach assures that the client is never kept in the dark. By tapping the Team's collective knowledge, connections and daily contacts with policy-makers, OH&P's clients receive information even as it is developing through written, phone and personal updates, bill summaries, and our weekly government affairs newsletter.

Invaluable Political Instincts And Knowledge

OH&P's Government Affairs Team is comprised of individuals who are experts in legislative procedure, how to use the rules to both pass and defeat legislation and a record to show we deliver. This procedural know-how, which is difficult to find, is particularly important when dealing with substantively complex bills and amendments and when developing the specific strategy for addressing the client's concern.

Substance Emphasized Most

While we have an excellent working relationship with all of the key players in the Legislature, OH&P believes that who one knows is not nearly as important as what one knows. In other words, the OH&P client receives more than mere "schmoozers," which are typically not useful other than as a source of entre. Instead OH&P's clients have the services of individuals who have a substantive knowledge of the issues, as well as the connections and the strategic, political, media and organizational savvy to identify threats and seize opportunities.

One-Stop Government Affairs Service

OH&P combines under one roof extensive substantive, legislative, media, political, writing and legal talent. From Vance Opperman's 20-plus years as a nationally prominent antitrust litigator and political activist to Ted Grindal's experience in the attorney general's office and statewide campaign manager, to Tom Heffelfinger's previous experience as U.S. District Attorney and Republican candidate for Hennepin County Attorney, to the rest of the Team's impressive experiences and essential talents -- all of the client's political bases can be covered by OH&P.

Grass Roots Organization Skills

With increasing frequency, successful government affairs programs are hinging upon the implementation of effective grass roots campaigns. Both at the State Capitol and in private practice, OH&P has specialized in presenting issues in the best possible public interest light, and in developing the coalitions necessary to accomplish our goals. In fact, Ted Grindal and Liz Quam received national recognition for a successful public affairs campaign that they developed for an OH&P client.

Effective, Energetic Representation

OH&P prides itself on its tireless representation of its clients in the political arena. Unlike the approach taken by some firms, OH&P believes that the client's interests are fully protected and furthered only by maintaining active vigilance from gavel to gavel, and beyond. OH&P has not lost the "hungry edge" that keeps us successful by working very hard and performing first-rate work for our clients.

**THE Opperman Heins & Paquin METHOD OF OPERATION**

Before making a single contact, the OH&P Government Affairs Team develops a strategy, carefully tailored to the needs of the client, and involving the client to the extent necessary and desired. The OH&P client is at all times in the driver's seat, making all key substantive and political decisions. It is OH&P's job to provide the facts and the best options while using as little of the client's time as possible -- we understand that the client's primary interest is business, not the Legislature. At the same time, the client remains the primary spokesperson and decision-maker.

The successful government affairs effort requires careful orchestration -- from beginning to end -- using political experience and savvy years in the making. While each client's needs and goals are worked into a unique strategy, in general, OH&P follows its own tried and tested government relations strategy involving the following basic steps:

- **ANALYSIS**            Develop an analysis of the key committees' and subcommittees' agendas for upcoming sessions including an examination of the likely legislative vehicles for attacks, the key players on those bills, and the time of action on each; conduct worst case legislative analysis; game play the opposition's attack including its substance, procedural, political, coalition and press strategies.
  
- **TRIP WIRE**            Erect a "trip wire" through targeted meetings with key staff and members of the policy-making body to prevent being blindsided by looming changes in the law; register our concerns; secure commitments to provide prompt notification of any developments.
  
- **PUBLICITY**            Develop and write the public interest case for the clients position; condense substantive and legal documents for legislature and media consumption; prepare visual aids which graphically demonstrate the case.
  
- **OUTREACH**            Educate other interest groups and companies so a coalition can be organized when needed; identify friendly academics and other unbiased supporters.
  
- **EDUCATION**            Arrange educational meetings for the client with key decision-makers and staff to develop support; foster the development of the client's own set of political friends.
  
- **MONITOR**            Monitor legislative hearings, bill introductions, and the changing pulse of policy-makers.

**THE OPPERMAN HEINS & PAQUIN GOVERNMENT AFFAIRS TEAM**

Vance K. Opperman

Mr. Opperman has been a nationally prominent litigator and political activist for over 20 years. He has long played a critical role in shaping policy in Minnesota and currently serves as finance director to Governor Rudy Perpich. Mr. Opperman is the immediate past president of the Minnesota Chapter of the Federal Bar Association

H. Theodore Grindal

Mr. Grindal is an attorney who heads up the OH&P Government Affairs Team, with nearly a decade of past political experience in Minnesota. He served for over three years as Special Assistant Attorney General of Minnesota dealing extensively with general administrative issues, as well as workers compensation and health care issues. Mr. Grindal has managed a number of major campaigns in the state and is a graduate of the University of Minnesota School of Law.

Thomas B. Heffelfinger

Mr. Heffelfinger's understanding of the political process is tapped when strategic plans and decisions are being made for a client. He is a former Assistant U.S. District Attorney and continues his political activism for Republican candidates.

Jonathan W. Cuneo

Mr. Cuneo heads up OH&P's Washington, D.C. office. Most recently, he served as Counsel to the Subcommittee on Monopolies and Commercial Law of the U.S. House of Representatives Committee on the Judiciary. He has served as an attorney at the Federal Trade Commission. Mr. Cuneo's familiarity with national politics and congressional personalities and procedures is a valuable resource to OH&P's clients.

Kevin M. Chandler

Mr. Chandler is an attorney who served for two years as Counsel and Policy Analyst to the U. S. House Subcommittee on Telecommunications, Consumer Protection and Finance, chaired by Congressman Timothy E. Wirth of Colorado. A graduate of the Institute for Communications Law Studies at the Catholic University School of Law, Mr. Chandler also served in the Special Regulated Industries section of the U.S. Department of Justice, Antitrust Division.

Elisabeth A. Quam

Ms. Quam serves as OH&P's Director of Public Affairs. Prior to joining Opperman Heins & Paquin, she served as Director of Public Relations and Policy Communications for the Minnesota Medical Association. She has a background in print journalism and state government and served on the staff of the Independent-Republican Senate Caucus. Ms. Quam assists with OH&P's government relations activities and offers public affairs consultation to the firm's clients.

Karen E. James

Ms. James served for 14 years as a staff member in the Minnesota House of Representatives. She has served as committee administrator to the State House Appropriations Committee, Energy Committee and Committee on Local Urban Affairs.

Thomas A. Satre

Mr. Satre served for a number of years as a business consultant to Congressman James Oberstar before becoming the campaign field manager for Governor Rudy Perpich. Originally from Minnesota's Iron Range, Mr. Satre served as the committee administrator to the Property Tax Division of the Minnesota House Tax Committee.

Jennifer L. Engh

Ms. Engh formerly served as a legislative liaison to President Ronald Reagan and as aide for U.S. Senator David Durenberger. Most recently, she served as fiscal analyst for the Minnesota House Republican Caucus.

Peter B. Thorson

Mr. Thorson formerly served on the staff of Congressman Martin Sabo. A graduate of Augsburg College, Mr. Thorson is a Legislative Analyst at Opperman Heins & Paquin, specializing in the areas of public finance, health care and local government.

Kathleen K. Novak

Ms. Novak serves as OH&P Fundraising and Events Coordinator -- a position she formerly held with Governor Rudy Perpich's successful 1986 campaign. Ms. Novak also serves on the 6th Congressional District DFL Executive Committee.

Anita H. Tollefson

Ms. Tollefson is the former legislative aide to State Senator Nancy Brataas and to the IR Senate Research Staff. As the coordinator of the Team's correspondence and scheduling, Ms. Tollefson helps ensure continuity, especially critical during the busy months of the legislative session.



**OPPERMAN HEINS & PAQUIN FEDERAL GOVERNMENT RELATIONS TEAM**

With increasing frequency, Congress and federal agencies are making "bottom line" decisions that directly impact business in Minnesota, as well as across the nation. Consequently, many Minnesota businesses and associations are now extending their efforts to the federal arena.

Seeing a void in such representation for Minnesota companies, Opperman Heins & Paquin opened a Washington office which, combined with our long-standing legal practice, is designed to offer clients a full range of services on and around Capitol Hill.

The OH&P Washington office is led by **Jonathan W. Cuneo**, who formerly served as counsel to the House Judiciary Committee under Chairman Peter W. Rodino, Jr. In this capacity, Mr. Cuneo oversaw policy regarding such issues as antitrust, trademark and copyright, federal courts, bankruptcy, and patents. Mr. Cuneo has also served as counsel with the Federal Trade Commission ("FTC"), and is currently counsel for the Committee to Save Antitrust Laws ("COSAL"). Well known by members of Congress from both sides of the aisle, as well as the staffs of the Executive Branch and many federal agencies, Mr. Cuneo has become known as one of the most effective lobbyists on the Hill.

There are very few businesses in Minnesota that have been able to escape the impact of the Committee on Energy and Commerce. With jurisdiction over such broad areas as energy policy, health care, travel and tourism, consumer protection, interstate and foreign communications, securities and exchanges, trade and general business issues, the Committee now wields extraordinary power in Congress. **Kevin M. Chandler** is an attorney who formerly served as policy analyst and counsel with the Energy and Commerce Committee, under Chairman John Dingell. He also served on the staff of the House Subcommittee on Telecommunications, Consumer Protection and Finance, chaired by then-Congressman, now-Senator Timothy E. Wirth of Colorado.

Yet another member of the OH&P Washington staff is **Jennifer Engh**. Prior to joining Opperman Heins & Paquin, Ms. Engh served as an assistant to U.S. Senator David Durenberger and, subsequently, in the office of Congressional Liaison at the Reagan White House. Ms. Engh brings with her a wealth of experience and contacts in Washington -- particularly on the Republican side of the aisle -- and is experienced in congressional protocol and procedure.

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Federal Government Team, Page 2

In addition to the core Washington staff, OH&P frequently makes use of other members of the firm who have excellent contacts with Washington and key members of Congress. **Vance Opperman**, for example, has played a key role in the campaigns of many members of the Minnesota congressional delegation, in particular. In fact, Rep. Gerry Sikorski formerly served as an attorney at OH&P before his election to Congress. Mr. Opperman is also a key fund-raiser and political strategist for some of Washington's key figures including Senator Al Gore, Senator Howard Metzenbaum, and many others.

Likewise, **Ted Grindal** has managed numerous federal campaigns in Minnesota, and formed the OH&P Federal Political Action Committee in 1984. Each year, OH&P's federal PAC makes substantial bipartisan contributions to the political process. In addition, **Peter Thorson**, a legislative assistant at OH&P, served on the staff of Congressman Martin Sabo prior to joining the firm.



May 2, 1989

Opperman Heins & Paquin's Government Affairs Clients  
Include:

The Southland Corporation

Mayo Foundation

Shearson Lehman Hutton

Daneco-Danieli Ecologia S.P.A.

Minnesota Academy of Ophthalmology

Minnesota Public Radio

West Publishing Company

The World Theater

Karli & Associates, Inc./The Prudential

Golden Valley Health Center

Minnesota Society of Anesthesiologists

Enhanced TeleManagement, Inc.

Minnesota Veterinary Medical Association

Washington County Housing and Redevelopment Authority

Minnesota Sportsfishing Congress

National Computer Systems

LS Transit Systems, Inc.

Edwards & Kelcey, Inc.

Siemens Energy & Automation, Inc.

Duewag Corporation, A.G.

National Electrical Manufacturers Association

Minnesota Association of Rental Dealers

Independent Bankers of Minnesota

Former clients for whom OH&P has achieved a successful result include: International Multifoods, Minnesota Medical Association, Blue Cross and Blue Shield of Minnesota and Minnesota Medical Insurance Exchange.

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**THE OPPERMAN HEINS & PAQUIN  
SEMINAR/PUBLIC SPEAKER PROGRAM**

One of the greatest strengths of the Opperman Heins & Paquin Government Affairs Team is its strong connections to numerous public officials from both sides of the aisle, not only on a state level, but nationally, as well. Consequently, OH&P has a unique ability to draw a wide range of speakers for various seminars, speaking engagements and receptions that are held periodically throughout the year.

The OH&P Seminar/Public Speaker Program offers numerous benefits to our clients. First, experience has demonstrated that the most effective means of developing a client's own set of political friends and allies is through one-on-one contact in a relaxed setting. OH&P's events are orchestrated in a way to maximize personal interaction between the client and the public official.

Second, such speaking engagements are a tremendous source of information. As guests of OH&P, we have found our featured speakers to be very open and frank in what are typically small, informal settings. Finally, the OH&P Seminar/Public Speaker Program is an excellent way of developing goodwill between the firm, the official, and the client.

The following is a partial list of the speakers that OH&P has presented over the past year:

<u>S P E A K E R</u>	<u>E V E N T</u>
Congressman Vin Weber	OH&P Breakfast Club
U.S. Senator Howard Metzenbaum	OH&P Reception
U.S. Senator David Durenberger	OH&P Breakfast Club
Attorney General Hubert H. Humphrey	OH&P Breakfast Club
U.S. Senator Timothy Wirth	OH&P Reception
Senator Roger Moe (D-Erskine)	OH&P Luncheon
Rep. Lee Greenfield (D-Mpls.)	OH&P Luncheon
Congressman Gerry Sikorski	OH&P Reception

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Seminar/Public Speaker Program, Page 2

Hennepin Cty. Comm. Mark Andrew	OH&P Breakfast Club
Hennepin Cty. Comm. John Derus	OH&P Reception OH&P Light Rail Seminar
Senator Duane Benson (R-Lanesboro)	OH&P Breakfast Club
Rep. Bill Schreiber (R-Brooklyn Pk)	OH&P Breakfast Club OH&P Tax Seminar
Mpls. City Councilman Steve Cramer	OH&P Breakfast Club
Rep. Gordon Voss (D-Blaine)	OH&P Tax Seminar
Rep. Terry Dempsey (R-New Ulm)	OH&P Tax Seminar
Senator Steve Novak (D-New Brighton)	OH&P Tax Seminar
Senator John Bernhagen (R-Hutchinson)	OH&P Tax Seminar
Senator Larry Pogemiller (D-Mpls.)	OH&P Tax Seminar
Rep. Marcus Marsh (R-Sauk Rapids)	OH&P Tax Seminar
Ramsey Cty. Comm. John Finley	OH&P Light Rail Seminar
Sen. Bill Luther (D-Brklyn Pk)	OH&P Light Rail Seminar
Hennepin Cty. Comm. Jeff Spartz	OH&P Luncheon
Commissioner of Commerce Michael Hatch	OH&P Luncheon
Hennepin Cty. Comm. Randy Johnson	OH&P Breakfast
Senator Roger Moe, Majority Leader	OH&P Breakfast
Rep. Robert Vanasek, Speaker	OH&P Luncheon
Senator Duane Benson, Minority Leader and Rep. Bill Schreiber, Minority Leader	OH&P Breakfast



**OPPERMAN HEINS & PAQUIN  
BIOGRAPHY**

Civil Litigation in State and Federal Courts.  
General Corporate and Commercial Practice.  
Administrative, Antitrust, Bankruptcy, Computer,  
Copyright, Franchise, Government Relations, Health Care,  
Insurance, Trademark and White Collar Criminal Defense  
Law.

**MEMBERS OF THE FIRM**

**VANCE K. OPPERMAN**, born Des Moines, Iowa, January 8, 1943; admitted to bar, Minnesota, 1970; U.S. District Court, District of Minnesota, 1971; U.S. Court of Appeals, Eighth Circuit, 1973; U.S. Supreme Court, 1975. Education: University of Minnesota (J.D. 1969). Member: Faculty, National Institute for Trial Advocacy, 1983; Finance Chair, Governor's Volunteer Committee, 1986--; Chair, Governor's Metropolitan Council Nominating Committee, 1986-1989; Governor's Judicial Merit Selection Committee, 1983; Board of Directors, Guthrie Theatre Foundation, 1987--; Board of Governor's, Minnesota Club, 1988--; Board of Directors, NASCAT, (New York), 1988--; President, COSAL, (Washington, D.C.), 1986-1988. Bar Association: Minnesota State Bar Association State Court Rules Committee, 1981--; Minnesota State Bar Association Section on Antitrust, Co-Chair and Founder, 1987-1989; Chairman, Client Security Fund, 1978-1981; Minnesota State Bar Association, Member, Long Range Planning Committee, 1988-1989; Federal Bar Association, President, 1987; and American Bar Association (Member, Sections on Antitrust, Litigation, Copyright and Intellectual Property).

**ROBERT J. SCHMIT**, born St. Paul, Minnesota, October 31, 1944; admitted to bar, 1969, Minnesota; 1973, U.S. District Court, District of Minnesota; 1975, U.S. Court of Appeals, Eighth Circuit; 1988, U.S. Supreme Court. Education: University of Minnesota (B.A., 1966; J.D., magna cum laude, 1969). Phi Beta Kappa; Phi Delta Phi. Member, University of Minnesota Law Review, 1967-1969. Member: Hennepin County, Minnesota State, Federal and American (Member, Antitrust Law Section) Bar Associations.

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**JOSEPH R. KERNAN, JR.**, born Los Angeles, California, October 4, 1944; admitted to bar, 1970, Minnesota and U.S. District Court, District of Minnesota; 1971, U.S. Court of Appeals, Eighth Circuit, 1986 U.S. Supreme Court. Education: University of Minnesota (B.A., 1967; J.D., cum laude, 1970). Member, University of Minnesota Law Review, 1968-1969. Member: Hennepin County, Minnesota State, Federal and American (Member, Sections on: Antitrust Law; Corporation, Banking and Business Law; Forum Committee on Health Law; Patent, Trademark and Copyright Law) Bar Associations. Field of Law: Antitrust and intellectual property.

**JAMES E. SCHATZ**, born St. Paul, Minnesota, March 19, 1946; admitted to bar, 1972, Minnesota; 1973, U.S. District Court, District of Minnesota and U.S. Court of Appeals, Eighth Circuit; 1976, U.S. Supreme Court. Education: Macalester College (B.A., 1968); University of Minnesota (J.D., magna cum laude, 1972). Pi Sigma Alpha; Order of the Coif. Member, University of Minnesota Law Review, 1970-1972. Law Clerk to Hon. Miles W. Lord, U.S. District Judge, District of Minnesota, 1972-1973. Board Member, Minnesota Higher Education Facilities Authority, 1973-1979. Board Member, Minnesota Job Skills Partnership, 1983-1987. Member: Ramsey County, Minnesota State, Federal and American (Member, Sections on: Antitrust Law; Corporation, Banking and Business Law; Computer Law; Patent, Trademark and Copyright Law; Science and Technology) Bar Associations. Field of Law: Corporate and commercial, copyright law, antitrust law.

**SAMUEL D. HEINS**, born Providence, Rhode Island, May 31, 1947; admitted to bar, 1973. Education: University of Minnesota (B.A., 1968; J.D., 1972). Visiting Professor, School of Architecture, University of Minnesota, 1974-1983. Law Clerk to Hon. Earl R. Larson, U.S. District Court, District of Minnesota (1972-1973). Member: Minneapolis Charter Commission; Past President, Minnesota Lawyers International Human Rights Committee; Acting President, Minnesota Center for Torture Victims, Inc.; Biography, Who's Who in American Law. Member: Hennepin County, Minnesota State (Member, Board of Governors, 1978-1984) and American Bar Associations.

**JEROME F. PAQUIN**, born Minneapolis, Minnesota, December 27, 1946; admitted to bar, 1975, Minnesota; 1978, U.S. District Court, District of Minnesota. Education: University of Minnesota (B.A., 1968; J.D., 1975). Member: Hennepin County, Minnesota State and American (Member, Sections on: Corporation, Banking and Business Law; Real Estate) Bar Associations. Managing Partner.

**RICHARD A. LOCKRIDGE**, born Des Moines, Iowa, August 23, 1946; admitted to bar, 1974, Iowa; 1976, Minnesota, U.S. District Court, District of Minnesota and U.S. Court of Appeals, Eighth Circuit; 1977, U.S. Supreme Court. Education: University of Iowa (B.A., 1968; J.D., with high distinction, 1974). Managing Editor, Iowa Law Review, 1973-1974. Law Clerk to Hon. Myron H. Bright, Judge, U.S. Eighth Circuit Court of Appeals, 1974-1976. Special Assistant Attorney General, Minnesota Attorney General's Office, 1976-1979. Member: Hennepin County, Ramsey County, Minnesota State and American (Member, Sections of Antitrust Law and Litigation) Bar Associations. Field of Law: Antitrust and securities litigation.

**AUDREY L. ESTEBO**, born Red Wing, Minnesota, July 18, 1952; admitted to bar, 1980, Minnesota; 1982, U.S. District Court, District of Minnesota; 1989, U.S. Court of International Trade. Education: South Dakota State University (B.A., 1974); University of Minnesota (J.D., magna cum laude, 1980). Order of the Coif. Member, 1978-1980 and Note and Comment Editor, 1979-1980, Minnesota Law Review. Member: Hennepin County, Minnesota State and American (Member, Sections on: Corporation, Banking and Business Law; Patent, Trademark and Copyright Law) Bar Associations. Field of Law: Corporate and commercial, copyright law, computer law.

**CHARLES N. NAUEN**, born Sioux Falls, South Dakota, September 27, 1954; admitted to bar, 1980, Minnesota; 1981, U.S. District Court, District of Minnesota; 1984, U.S. Court of Appeals, Eighth Circuit. Education: Baylor University (B.A., cum laude, 1976); University of Minnesota (J.D., cum laude, 1980). Law Clerk to Hon. O. Russell Olson and Hon. Daniel F. Foley, Judges, Minnesota District Court, Third Judicial District, 1980-1981. Arbitrator, Hennepin County, 1986--; Civil Referee, Hennepin County, 1987--). Member: Hennepin County, Ramsey County, Minnesota State (Member, Sections on: Antitrust; Bankruptcy; Civil Litigation) Federal and American (Member: Litigation, Business Law and Antitrust Section) Bar Associations; Minnesota Trial Lawyers Association; The Association of Trial Lawyers of America. Field of Law: Complex commercial litigation, environmental law, bankruptcy.

**H. THEODORE GRINDAL**, born Rugby, North Dakota, December 16, 1953; admitted to bar, 1980, Minnesota and U.S. District Court, District of Minnesota, U.S. Court of Appeals, Eighth Circuit, U.S. Supreme Court. Education: Augsburg College (B.A., cum laude, 1976); University of Minnesota (J.D., 1979). Special Assistant Attorney General, Minnesota Attorney General's Office, 1980-1983. Member: Hennepin County, Minnesota State (Member: Administrative Law Section and Health Law Committee) and American (Member, Sections on: Administrative Law; Antitrust; Forum Committee on Health Law) Bar Associations; Society of Medical General Counsel; National Health Lawyers' Association; Minnesota Government Affairs Council. Field of Law: Health care law, government relations, administrative law.

**THOMAS B. HEFFELFINGER**, born Minneapolis, Minnesota, February 13, 1948; admitted to bar, 1976, Minnesota, U.S. District Court, District of Minneapolis and U.S. Court of Appeals, Eighth Circuit. Education: Stanford University (B.A., 1970); University of Minnesota (J.D., 1975). Recipient, Special Achievement Award, U.S. Department of Justice. Assistant U.S. Attorney, District of Minnesota, 1982-1988. Assistant Hennepin County Attorney, 1976-1982. Member: Hennepin County, Minnesota State (Member: Criminal Law Section) and Federal Bar Association. Field of Law: White collar criminal defense, complex commercial litigation.

ASSOCIATES

**LINDA L. HOLSTEIN**, born Tracy, Minnesota, June 11, 1948; admitted to bar, 1983, Minnesota, U.S. District Court, District of Minnesota and U.S. Court of Appeals, Eighth Circuit. Education: University of Minnesota (B.S., with high distinction, 1970; J.D., cum laude, 1983). Staff Member, 1981-1982 and Note and Comment Editor, 1982-1983, Minnesota Law Review. Member: Hennepin County, Minnesota State and American (Member, Litigation Section) Bar Associations; Minnesota Trial Lawyers Association; Minnesota Women Lawyers Association. Field of Law: Employment law, commercial litigation.

**W. JOSEPH BRUCKNER**, born Omaha, Nebraska, October 19, 1955; admitted to bar, 1982, Nebraska; 1983, Minnesota; 1983, U.S. District Court, District of Minnesota; 1983, U.S. Court of Appeals, Eighth Circuit; 1985, U.S. Court of Appeals, Sixth Circuit; 1988, U.S. Supreme Court. Education: University of Nebraska (B.S., magna cum laude, 1978); Creighton University (J.D., cum laude, 1982). Alpha Sigma Nu. Editor-in-Chief, Creighton Law Review, 1981-1982. Law Clerk, Hon. Donald P. Lay, Chief Judge, U.S. Court of Appeals, Eighth Circuit, 1982-1983. Member: Hennepin County, Nebraska State, Minnesota State, Federal and American Bar Associations; The Association of Trial Lawyers of America; American Judicature Society.

**ALISON ECKSTEIN COLTON**, born New York, New York, August 22, 1955; admitted to bar, 1982, Minnesota and U.S. District Court, District of Minnesota. Education: Carleton College (B.A., cum laude, 1977); William Mitchell College of Law (J.D., cum laude, 1982). Member: Hennepin County, Minnesota State and American Bar Associations; Minnesota Women Lawyers (Member, Board of Directors, 1985-1988). Field of Law: Commercial litigation and administrative law.

**BRADLEY W. ANDERSON**, born Minneapolis, Minnesota, July 30, 1959; admitted to bar, 1984, Minnesota and U.S. District Court, District of Minnesota; 1985, U.S. Court of Appeals, Eighth Circuit. Education: University of Minnesota (B.S., magna cum laude, 1981; J.D., 1984). Law Clerk to Hon. Edward J. Parker and Hon. Harriet Lansing, Judges, Minnesota Court of Appeals, 1985-1986. Member: Minnesota State (Member, Corporation, Banking and Business Law Section) and Federal Bar Associations. Field of Law: Copyright and trademark law, corporate and commercial law.

**MARTIN D. MUNIC**, born Duluth, Minnesota, February 16, 1959; admitted to bar, 1984, Minnesota. Education: Drake University (B.A., summa cum laude, 1981). Phi Beta Kappa; Order of the Coif. Associate Editor, Minnesota Law Review. Law Clerk to Honorable Harry H. MacLaughlin, Judge, United States District Court for the District of Minnesota (1984-1986). Member: Hennepin County, Minnesota State, and Federal Bar Associations; Board of Directors, Minnesota Justice Foundation.

**MARGARET H. CHUTICH**, born Minneapolis, Minnesota, June 18, 1958; admitted to bar, 1984, Minnesota. Education: Stanford University (1977); University of Minnesota (B.A., 1980); Phi Beta Kappa; University of Zagreb, Yugoslavia (Scholarship to study the Serbo-Croatian language, 1980-1981); University of Michigan (J.D., cum laude, 1984). Law Clerk to Honorable Diana E. Murphy, Judge, United States District Court for the District of Minnesota (1984-1986). Member: Hennepin County, Minnesota State and Federal Bar Associations; Minnesota Lawyers International Human Rights Committee; American Judicature Society; United Way Allocations Panel.

**PATRICIA A. BLOODGOOD**, born Teaneck, New Jersey, March 14, 1956; admitted to bar, 1984, Wisconsin and Minnesota. Education: University of Minnesota (B.A., 1980); University of Wisconsin Law School (J.D., 1984). Member: Hennepin County, Minnesota State and American Bar Associations; State Bar of Wisconsin. Field of Law: Employment law, commercial litigation.

**ANNE L. SCHLUETER**, born Sisseton, South Dakota, January 21, 1958; admitted to bar, 1984, South Dakota; 1985, Illinois; 1986, Missouri; 1987, Minnesota. Education: Chaminade College of Honolulu; Huron College (B.A., magna cum laude, 1978); University of South Dakota School of Law (J.D., 1984). Co-Author: "Hospital Liability for the Acts of Independent Contractors: The Ostensible Agency Liability Theory," Vol. 30, No. 3, St. Louis University Law Journal Health Law Symposium, 1986; "Minnesota's Physician Reporting Law: When Am I My Brother's or Sister's Keeper? Parts I and II," Vol. 71, Minnesota Medicine, 1988; Author: "Setting Limits--Minnesota's New Fee Splitting Laws," Vol. 2n.5, Minnesota Physician, 1988. Law Clerk to Chief Justice Jon Fosheim of the South Dakota Supreme Court, 1984-1985. Member: Minnesota State, The Missouri Bar; Illinois State and American (Member, Health Law Forum Committee); Bar Associations; State Bar of South Dakota; National Health Care Lawyers Association; Secretary, Board of Directors, Regional Association of Preferred Provider Organizations; American Academy of Hospital Attorneys. Field of Law: Health care law.

**RICHARD H. PLUNKETT, JR.**, born Rochester, Minnesota, September 19, 1955; admitted to bar, 1984, Minnesota. Education: University of Minnesota (B.A., 1977; J.D., cum laude, 1984). Member: Hennepin County, Minnesota State and American Bar Associations; The Association of Trial Lawyers of America; Minnesota Trial Lawyers Association.

**ANDREA J. KAUFMAN**, born St. Paul, Minnesota, January 25, 1960; admitted to bar, 1985, Minnesota and U.S. District Court, District of Minnesota. Education: University of Wisconsin (B.A., with high honors, 1982); University of Minnesota (J.D., 1985). Staff Member, 1983-1984 and Note and Comment Editor, 1984-1985, Minnesota Law Review. Law Clerk to Hon. David R. Leslie, Judge, Minnesota Court of Appeals, 1985-1986. Member: Minnesota State, Federal and American Bar Associations; Minnesota Women Lawyers Association. Field of Law: Commercial litigation.

**DAVID K. RYDEN**, born Moose Lake, Minnesota, May 6, 1959; admitted to bar, 1985, Minnesota. Education: Concordia College (Moorhead, Minnesota) (B.A., summa cum laude, 1981); University of Minnesota Law School (J.D., cum laude, 1985). Member and Director: The International Moot Court Program of the University of Minnesota, 1983-1985. Member: Hennepin County, Minnesota State and American Bar Associations; Environmental Law and Bankruptcy Subsections of the Hennepin County Bar Association.

**BARBARA J. GRAHN**, born St. Paul, Minnesota, May 5, 1949; admitted to bar, 1977, Minnesota. Education: University of Minnesota (B.A., 1972; J.D. 1977). Member: Hennepin County, Minnesota State and American Bar Associations (Member, Sections on: Business Law; Patent, Trademark and Copyright Law; Computer Law).

**KEVIN M. CHANDLER**, born Bay City, Michigan, March 31, 1960; admitted to bar, 1986, Minnesota. Education: University of Minnesota (B.A., 1982); The Catholic University of America (J.D., 1986). Member, Institute for Communications Law Studies, The Catholic University of America, 1983-1985. Author: "Communications Law Education Advances," Communications Lawyer, Volume 3, No. 2, Spring, 1985. Policy Analyst, 1985, Counsel 1986, U.S. House of Representatives, Subcommittee on Telecommunications, Consumer Protection and Finance. Member: Minnesota State (Member: Telecommunication Law Committee) and Federal Bar Association. Field of Law: Governmental relations, corporate and telecommunications law.

**RAYMOND OECHSLER**, born Englewood, New Jersey, January 18, 1957; admitted to bar, 1987, Minnesota and U.S. District Court, District of Minnesota; 1988, U.S. Court of Appeals, Fifth Circuit. Education: University of Minnesota (B.A., 1979; J.D., cum laude, 1987). Member: Hennepin County, Minnesota State and Federal Bar Associations.

**JOHN D. NORQUIST**, born Minneapolis, Minnesota, June 2, 1961; admitted to bar, 1986, Minnesota and U.S. District Court, District of Minnesota. Education: St. Olaf College (B.A. cum laude 1983); University of Minnesota at Minneapolis (J.D. 1986). Staff Member, 1984-85 and Articles Editor, 1985-86, Minnesota Law Review. Author: "SEC v. Lowe: The Constitutionality of Prohibiting Publication of Investment Newsletters Under the Investment Advisers Act," 69 Minn. L. Rev. 937 (1985). Law Clerk to Hon. William C. Stuart, Judge, U.S. District Court for the Southern District of Iowa, 1986-1988. Member: Hennepin County, Minnesota State, Federal and American Bar Associations.

OF COUNSEL

**JONATHAN W. CUNEO**, born New York, N.Y., September 10, 1952; admitted to bar, 1977, District of Columbia; 1978, U.S. District Court for the District of Columbia. Education: Columbia College (A.B., 1974); Cornell Law School (J.D., 1977). Law Clerk to Judge Edward A. Tamm, U.S. Court of Appeals for the District of Columbia Circuit, 1977-1978. Attorney, Office of the General Counsel, Federal Trade Commission, 1978-1981. Counsel, Subcommittee on Monopolies and Commercial Law, House Committee on the Judiciary, 1981-1986. Member: The District of Columbia Bar Association.

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# Marketplace

Star Tribune

Saturday  
December 31 / 1988

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## Worker wins damages in firing

### Ruling against 3M could alter way state firms discipline employees

By Dave Hage  
Staff Writer

In a ruling that could change the way Minnesota companies evaluate and discipline their employees, a St. Paul jury has ordered 3M Co. to pay \$240,000 in back pay and damages to a scientist who was fired after a disagreement about his job performance.

The verdict, which followed a five-week trial in Ramsey County District Court, is thought to be the first time that a Minnesota court has applied a business principle called "good faith

and fair dealing" to an employment case.

The suit was filed by Enaiatollah Vafael-Makhssoos, who claimed that 3M supervisors failed to evaluate his work honestly, then gave false reasons for his discharge.

"Essentially, he felt they weren't laying their cards on the table with him," said Richard Wylie, the Minneapolis attorney who represented Makhssoos. "Our jury was allowed to determine whether Makhssoos and 3M had an implied understanding that they would deal honestly with

each other."

A 3M spokesman said Friday that the company is disappointed with the verdict and believes that Makhssoos' allegations are false. He said 3M hasn't decided whether to appeal.

In a separate lawsuit, Makhssoos, who was born in Iran, accused 3M of discriminating against him on the basis of national origin. That issue is still pending in court.

Two other allegations, that 3M broke an implied lifetime employment contract and that it intentionally caused

Makhssoos emotional distress, were dismissed. The jury upheld a fourth allegation, that 3M defamed Makhssoos, but found no malice on the part of the company and awarded no damages.

The decision could represent a major erosion of Minnesota's "employment at will" doctrine, the legal theory that, in the absence of a signed contract, employers can hire and fire employees for any reason as long as they don't discriminate and as long as the discharge doesn't violate some

3M continued on page 9B

## 3M

Continued from page 5B

principle of public policy.

Attorneys said yesterday that the decision will cause employers to scrutinize their job-review systems and firing decisions much more carefully. "Plaintiffs' attorneys have been pleading this as a cause of action for three years, but until now judges in Minnesota have refused to recognize it," said Linda Holstein, an employment specialist with the Minneapolis law firm of Opperman & Paquin. "If a jury has awarded damages for bad faith by an employer, it will be harder for employers to fire someone without careful analysis of the person's performance, job history and

other conditions."

Many attorneys feel that the at-will doctrine has been eroding gradually in Minnesota since a mid-1980s case known as "Pine River," in which a court found that a company's employment handbook can be considered an employment contract and that a fired employee can sue for damages if his or her supervisor didn't follow the handbook.

Minnesota also has a "whistleblower" statute under which employers can be held liable for firing someone who calls attention to illegal activity at the company.

## Election 1988

With the elections fast approaching, a survey of Minnesota's political scene seemed appropriate. Our angle was to focus on politically active bar members to get insight on who in the legal community is active, influential and up-and-coming. Biographical summaries of some of these attorneys begin on page 18

Our survey started with a call to **John French** at **FAEGRE & BENSON**, (Mike Dukakis' Harvard Law classmate of 1960 and head of his campaign in Minnesota.) French tipped us to **Bruce Willis** of **POPHAM, HAIK, SCHNOBRICH & KAUFMAN**, a moderate republican who headed the Dole campaign in Minnesota. It wasn't hard to identify **Tom Borman** of **MASLON, EDELMAN, BORMAN & BRAND**. His \$700,000 fundraising reception for Dukakis set a Minnesota record. Another major democratic fundraiser, **Vance Opperman** of **OPPERMAN & PAQUIN**, is universally known in DFL circles. As for up-and-coming, Durenberger's Chief of Staff **Douglas Kelley** is regarded by some higher-ups in the democratic party as

in the party as positioned to run for some major offices when he returns to Minnesota. Don't be surprised if he starts with the Minnesota attorney general seat in 1990. **Tom Heffelfinger**, **Opperman & Paquin**, is another young Republican likely to be heard from in the future as well. **Tony Trimble** of **TRIMBLE & ASSOCIATES** is the I-R chair in Minnesota.

There are many attorneys influential in the Minnesota political scene, and we intend to profile these people in subsequent issues of **MLJ**.

As for the seven in this issue, they provide a sampling of attorneys likely to be major factors in the Minnesota political scene for some time to come. Though we may have missed someone, those that appear belong.

The number of attorneys active in the political scene precluded being comprehensive. To help narrow our scope, we focused on practicing attorneys. We interviewed at least another 10 politically active attorneys. In addition to asking interviewees about their involvement, we asked for their insights, as well as names of others they thought held stature and influence. One name led to the next. Here are a few of those:

### Thomas Heffelfinger

**Thomas B. Heffelfinger** After graduating from Stanford in 1970, and the University of Minnesota Law School in 1975, Heffelfinger joined the Hennepin County Attorney's Office, and has been a prosecutor up until May of this year when he became a partner at **OPPERMAN & PAQUIN**. Prior to that, he was an assistant U.S. Attorney for six and a half years, and Assistant Hennepin County Attorney for six years. He ran for Hennepin County Attorney in 1986, losing to incumbent Tom Johnson by 3 percent. Heffelfinger feels his candidacy was well accepted by voters, noting that in March, his name recognition was only 2 percent. Heffelfinger feels his defeat was largely because of a low voter turnout by Republicans in the suburban areas. "I had to have an average voter turnout, but didn't get it. I got 42 percent in Minneapolis; I was hoping for 40 percent. Republican and Independent voters did not turnout." While Heffelfinger did better than he anticipated in Minneapolis, he says the lack of votes in the suburbs were what defeated him.

Heffelfinger's view was that the voters didn't like the product that the IR was putting out. "The party has realized that it has to have a more broad-based appeal ... we must be more committed to winning. That's why we exist. The fact is



*Thomas Heffelfinger*

that the party got too bogged down in its own infighting as opposed to presenting itself to the voters. They (IR) lost sight of that. You have to get (those who) consider themselves to be Republicans excited about what you're trying to do," says Heffelfinger. "We had a popular governor running, and the media was portraying it as a walkover. It wasn't, and it was a real disservice to the voters. When people feel that the election is a done deal, and they feel that their vote

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## On Capitol Hill, one staffer's abuse is another's plum job

By Kevin Chandler

The recent spate of horror stories about the treatment of Capitol Hill staff workers brings to mind an old maxim: Better be ignorant of a matter than half know it. Unfortunately, while appealing to the public's prurient interests, these tales of workplace abuse are but a portion of the whole Capitol Hill story. Indeed, the public now half knows it.

Recent press accounts regarding "the Hill" environment have been rife with accusations ranging from alleged treatment of staff workers like valets to such "abusive" behavior as calling staff meetings on Friday evenings. To fully comprehend the seriousness and validity of these charges, however, it is important to grasp what the Hill is truly all about.

First and foremost, Hill staffers are different from any other employees in the nation. Akin to students on a college campus, Capitol Hill staffers are young, bright, intense and ambitious. They are not in search of careers on the Hill, but rather, the excitement of national politics and a resume for the future. They work extremely hard, and play even harder. They burn out quickly — staying on the Hill on average just over two years — and excel quickly in the private sector, largely due to their Hill experience.

Likewise, working for a member of Congress bears no resemblance to working for any other employer. While in session, the Congress member does not have a second of time unaccounted for. Most must literally schedule time to spend with their spouses and children. They are perpetually moving from committee hearings to floor sessions, to constituent visits, to receptions, to the home districts and back again — all while under constant scrutiny and attack from political opponents. They draw a salary of just over \$89,000, from which they must pay for two houses (one in Washington and one back home), living expenses in an expensive city, and the maintenance of an overall standard that Americans have come to expect from members of Congress.

With this as a backdrop, the Hill staffer has one unwritten, unspoken, but understood, responsibility: to ensure that *everything* goes smoothly in the member's life. While normally this means drafting legislation, constituent correspondence, speeches and the like, at times it also means performing what appear to the outside world as menial tasks — such as picking up a child from day care so that the member can make a scheduled meeting or vote, or swinging by the laundry to retrieve a shirt needed for a morning press conference.

The overwhelming majority of Hill staffers take such responsibilities in stride. They are loyal and dedicated to their members, and are happy to help in any way possible. Seldom are tasks ordered; seldom must the members ask. The "heads up" staffer knows instinctively when to lend a hand — regardless of the task. Abusive? Unreasonable? Not on the Hill.

Herein lies the other half of the story. For while the Hill is an extremely difficult place to work, it provides enormous satisfaction, power and benefits to those who inhabit it — members and staff workers alike. In many ways, the Hill is like a drug, with the effective staffer thriving and craving the hectic pace and impossible workload, despite the occasional negative impact upon physical and mental health. Without a doubt, there are no other jobs that offer a 22-year-old, straight from college, the

opportunity to sit down for a meeting with some of the nation's most powerful dignitaries and corporate CEOs, attend receptions with the nation's "movers and shakers," or see his writings in some of the most prestigious publications in the country.

More important, nowhere can an individual build a more solid foundation for future success in the private sector than on the Hill. Consequently, as much as it may appear that the staff is being used and, at times, abused, there is another side to the equation: The staffer uses the member along with the prestige and power that Congress represents, just as effectively and fully as the member uses staff.

There is no question that Capitol Hill is not for everyone. It is truly another world — a world that thrives on power and energy, and yes, to some extent, greed. Certainly, there are isolated cases of staff abuse on the Hill that deserve our attention and outrage. But taking too seriously accusations of unreasonable use and treatment of Hill staff is a dangerous business. One person's abuse is another's job, and there is no job like that of congressional aide.

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*Kevin Chandler served for nearly three years on Capitol Hill on the staff of Rep. Timothy Wirth of Colorado. He is currently an attorney in the Minneapolis law firm of Opperman & Paquin.*

## Metro/State news

# THE MONDAY BRIEFING / Government

### Inside talk

#### Legal trend

The Minneapolis law firm of Opperman & Paquin has joined a trend toward enlisting nonattorneys as lobbyists and public affairs specialists. Its new public affairs director is Elisabeth Quam, an Independent-Republican activist and lobbyist who helped engineer the Minnesota Medical Association's effort to change state malpractice law. Quam said that a few firms across the country have hired people like her to high-level positions, but that the arrangement is not common yet in Minnesota. Hiring Quam also represents something of a trend toward bipartisanship in politically involved law firms. The senior partner, Vance K. Opperman, was finance director for DFL Gov. Rudy Perpich's 1986 campaign. "Expertise in public affairs is hard to find," Opperman said in a press release. "If we've also gotten someone who has strong Republican ties, it can only enhance our firm."

## Opperman adds public affairs director

**O**pperman & Paquin, a Twin Cities law firm, has taken a step which may indicate a new trend for Minnesota law firms that offer governmental affairs services to their clients.

Elisabeth Quam, a non-attorney, has joined the firm as its Public Affairs Director. "There are several firms throughout the country that have had great success with such an arrangement. It just has not become commonplace here in Minnesota," said Ted Grindel, who directs Opperman & Paquin's legislative efforts. "When we are representing a client who's got a tough go with an issue, sometimes the most effective way to be successful is to take the issue to the public. With Liz's background, she's a perfect fit for our law firm."

Quam, most recently on staff at the Minnesota Medical Association, is recognized as playing a key role in designing the Association's successful malpractice reform effort. She also is known for her Independent-Republican connections and activism, having worked for the state senate IRs under Senators Robert Ashbach and James Ulland.

# Takeovers are just 1 reason

By Susan Feyder  
Star Tribune Writer

After more than 25 years as a stockbroker, Roger Lindquist knew that every investor had to expect to lose some money on the market once in a while.

But when the value of his 1,000 shares of Digital Equipment Corp. dropped by \$30,000 in a single day, he said, "It was a bit of a shock, to say the least."

Lindquist, who lives in Hopkins, had bought the stock a couple of months earlier on the basis of some rosy earnings projections from the Boston-based firm. When those forecasts proved false, Lindquist and hundreds of other stockholders sued Digital, alleging that it had misled them about the company's financial fortunes.

The suits, filed about four years ago, were settled recently when Digital set up a \$9 million pool to partly reimburse shareholders. Lindquist received \$700, a tiny fraction of the \$25,000 loss he realized when he sold his Digital stock. But he doesn't regret going through with the suit.

"I didn't ever expect to get my money back," he said. "It was worth it in the sense that I felt I had been wronged."

Increasing numbers of investors in Twin Cities-based companies appear to feel the same way. Some of the area's largest corporations recently have been sued by share-

Suits continued on page 7D

## ANGRY SHAREHOLDERS

Dec. 22, 1988, was an active day in court for stockholders of three major Twin Cities-based companies. In separate suits, shareholders accused the companies' managers of mismanaging their businesses and misleading investors.

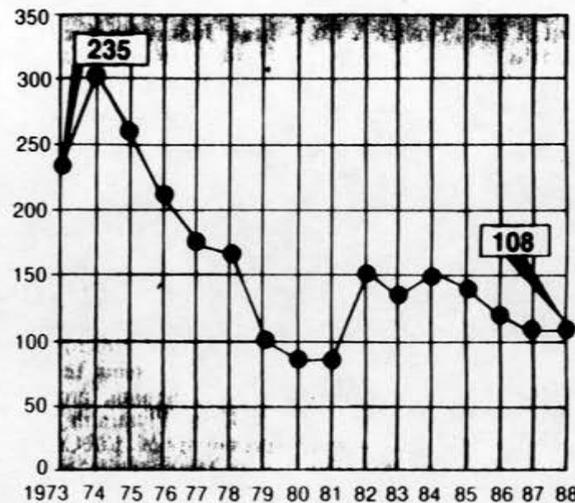
### First Bank System:

First Bank announced Dec. 19 that it would lose \$300 million in 1988, primarily because of a \$500 million loss on the sale of \$4.6 billion in U.S. Treasury securities. A shareholder sued three days later, alleging that the bank holding company engaged in "reckless high-risk speculation."

### Class-action securities lawsuits filed in federal courts

The number filed in federal courts nationwide has declined in the past several years, but that may be because more suits are winding up in state courts, lawyers say.

Number of suits



Source/ Class Action Reports, Washington, D.C.

## Shareholder lawsuits are on the rise

### Honeywell Inc.

After assuring analysts and investors that its earnings would increase, Honeywell Inc. disclosed Dec. 20 that it would lose \$400 million in 1988. A shareholder sued two days later, alleging that the company gave a false picture of its financial fortunes, causing investors to buy stock at "artificially inflated prices."

### Green Tree Acceptance

A contract dispute between Green Tree and former parent Midwest Federal Savings and Loan surfaced publicly last September when the two companies' sued each other. Shareholders sued, alleging that Green Tree knew of the contract problems earlier and should have informed stockholders. The suit also alleges that current and former Green Tree officers and directors unloaded their shares before news of the contract dispute broke.

Star Tribune graphic/ Ray Grumney

# SUIT: Twin Cities litigation on the rise

Continued from page 1D

holders, and Twin Cities law firms who represent both investors and companies say they're busier with stockholder litigation these days.

The picture is not as clear on the national level. Class Action Reports, a Washington-based legal periodical, says that in 1988, 108 class-action securities cases were filed in federal courts across the country. That's the lowest total since 1981. However, those numbers could be misleading. Class-action suits of all types have been dropping in recent years, said Beverly Moore, editor of the report.

And Vance Opperman, senior partner in the Minneapolis law firm of Opperman & Paquin, said he believes that a growing number of cases are being filed in state courts because a growing body of state law has made that advantageous to plaintiffs.

Some of the increase on the state level could be tied to the increase in hostile takeovers. Melvyn Weiss, a New York attorney whose firm is considered the leader in shareholder rights litigation, believes that takeovers now account for most suits by investors.

When Dart Group Corp. threatened to acquire Dayton Hudson Corp. in 1987, several lawsuits were filed against the Minneapolis retailer for refusing to negotiate with Dart and to challenge a state law that helps Minnesota corporations fight unfriendly takeovers. Those suits were dropped after Dart withdrew its bid.

More recently, Pillsbury Co. faced a class action suit from shareholders seeking to force it to negotiate with Grand Metropolitan PLC of Great Britain or to come up with a deal for shareholders as good as Grand Met's unsolicited purchase offer. Last month, Pillsbury capitulated and accepted a \$5.7 billion purchase offer from Grand Met. The suits are in the process of being dropped, said Jack Chestnut, whose Minneapolis law firm, Chestnut & Brooks, represented stockholders.

But an investment gone sour can also trigger a suit. On a single day last month, three Twin Cities-based companies — Honeywell Inc., Green Tree Acceptance Inc. and First Bank Systems Inc. — found themselves named in suits by investors unhappy with the way the companies did business and for allegedly failing to inform stockholders of problems. This month, Inter-Regional Financial Group and two subsidiaries were sued in connection with the bankruptcy of an Arizona company whose securities they helped underwrite.

Gordon Busdicker, whose firm, Faegre & Benson, has defended Dayton Hudson, Pillsbury and other area companies, believes that one reason shareholder suits may have increased is a growing willingness by courts to review the business judgment of executives and directors.

Lawrence Brown, also an attorney with Faegre, thinks another reason is a recent U.S. Supreme Court decision that made it easier for shareholders to prove they were defrauded by relying on public statements about companies' financial prospects.

The decision stemmed from a shareholders' suit against Basic Inc., a Pennsylvania minerals processing firm accused of falsely denying it was discussing a merger with another company interested in acquiring it. When Basic denied that it was in merger talks, the shareholders sold their stock. They sold before trading in the stock was suspended following a merger agreement.

The court ruled that it was up to defendants to prove that shareholders hadn't relied on statements from the companies when they made their investment decisions; previously the burden of proof had been on plaintiffs.

"It created an area that will draw class action suits like iron filings to a magnet," Brown said of the decision. "Every time a publicly held company takes a hit on earnings and must publish something about it, it'll be like sending an engraved invitation to the plaintiff's bar."

But Chestnut believes that shareholders may simply have become more dissatisfied with corporate managements: they think have acted irresponsibly.

News-media coverage of successful shareholder suits also has encouraged more investors to sue, Chestnut said. For example, Lindquist contacted Chestnut's firm because of the publicity it received for recovering \$52 million for investors in Flight Transportation Corp., a now-defunct Eden Prairie company that sold stock in a nonexistent air charter service.

Sophisticated investors such as Lindquist are typical of shareholder litigation clients, Chestnut said. Often they're referred by attorneys in other parts of the country who believe it advantageous to sue a company where it is incorporated or headquartered, he said.

Brokers also refer clients, sometimes to take the heat off themselves because they were the ones who recommended the stock, said Opperman. It's not unusual for accountants, brokerage houses, banks and law firms to be included in shareholder suits. In fact, Opperman's firm, which had represented Flight Transportation, was one of several law and brokerage firms sued in that case. Opperman's insurance carrier paid \$2.1 million toward the settlement.

But another type of client also is emerging, according to Faegre's Busdicker. So-called "professional stockholders" who often hold only a token number of shares — and who he believes may have bought stock to be eligible for shareholder suits — frequently appear on lists of plaintiffs, he said. Busdicker said he recently did a computer search of shareholder lawsuits filed in the last three years and discovered the name of one such stockholder, whom he declined to identify, who showed up as a plaintiff in 41 suits.

John French, another attorney at Faegre, believes that the advent of the professional stockholder (who isn't doing anything illegal) supports the notion that shareholder litigation is a growing business.

Law firms, of course, benefit from this trend. Besides defending clients, Faegre's corporate group is doing an increasing amount of work advising companies on how to thwart unfriendly takeovers that can spark shareholder lawsuits, French said.

Takeover defenses can include measures such as fair-price provisions, which require stockholders to receive the same price if a company is acquired, or supermajority provisions, which require the agreement of a very high percentage of shares to approve a merger.

Fees for plaintiffs' firms typically are a portion of any settlement that is reached. For example, Chestnut's firm received \$1.7 million for its role as the lead firm in the Flight Transportation case. Attorneys' fees and court costs totaled about \$8 million, or about 15 percent of the settlement. Chestnut and others believe that many attorneys have taken on shareholder litigation to make up for a decline in antitrust litigation in recent years.

Attorneys differ on the effect that shareholder suits may have on corporate executives' ability to run companies.

French wonders whether the suits could discourage managers from taking some risks that might be necessary for companies to grow.

"The willingness of qualified people to be directors could also be affected, although I don't think we've seen that yet with companies here," he said.

Faegre is representing directors of Honeywell, First Bank and Green Tree who have been named in shareholders' suits.

However, Louis Lowenstein, an attorney and corporate law professor at Columbia University in New York, says he doubts that most executives would let the prospect of shareholder suits govern their everyday business judgments.

"You can't successfully sue the president of a company for not being smart," Lowenstein said. "The lawsuit is a rather clumsy instrument, something that should be used as a last resort if an investor feels management has breached its duty of loyalty. I will say this — that there are times when it's been used as first resort. That can make it a nuisance."

Chestnut says he wouldn't accept a case where a company was being sued simply for an error in business judgment.

"It would take something that deviated from an accepted course of business conduct," such as fraud, he said.

He and Opperman say they think the suits can serve as a reminder to corporate management to be more accountable to shareholders.

"They can reward companies that are honestly managed, because in general, you can assume that they're not going to get sued," Opperman said. "What companies get sued for isn't for taking risks, it's for not disclosing it. You can do whatever you want, you just have to tell people what you're doing."

MINNESOTA LAWYER

— PEOPLE —

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AUGUST 1988 / VOLUME 3 / NUMBER 10

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Opperman & Paquin announced it will open an office in Washington, D.C. in September. The firm's new attorney in its Washington office will be Jonathan W. Cunéo, currently Of Counsel for the Washington firm of Benner, Burnett & Coleman. Cuneo specializes in the areas of antitrust, trade regulation and legislative matters.

# Billboard firm faces biggest antitrust suit in state history

By Susan E. Peterson  
Staff Writer

The state attorney general's office filed the biggest antimonopoly case in Minnesota history Wednesday against Naegele Outdoor Advertising Inc., seeking to force the company to sell a large part of its Twin Cities billboard operations.

The suit, filed in Ramsey County District Court, alleged that Naegele has monopolized the outdoor advertising business in the Twin Cities, partly through its acquisition of five competing companies in the past 12 years. The action, which was brought under a seldom-used provision of a

1971 state antitrust law, also asks that Naegele be ordered to stop engaging in anticompetitive acts and to pay a civil penalty of \$50,000 for each violation.

Nancy Fletcher, general manager of Naegele, said the attempt to break up the company "is both misguided and totally uncalled for.

"This effort to dismantle a major Minnesota business, founded in this state over 50 years ago, by relying on a seldom-used state statute and an outmoded view of the competitive market simply is not justified by the

Naegele continued on page 20A

## Naegele Continued

recent antitrust findings in cases like this elsewhere in the country," Fletcher said.

The divestitures called for in the suit would cut about 40 percent from the company's annual Twin Cities revenues, which were \$18 million in 1987, Fletcher said. Naegele, which has operations in 16 states, had total revenues last year of about \$100 million.

Tom Pursell, assistant attorney general and head of the antitrust division, said the case is the first in which the state has asked for substantial divestiture of a company's assets, a move that historically has been handled at the federal level and even then, rarely.

Pursell was asked why the state provision had not been used against other companies with large market shares, such as Northwest Airlines, which has about an 80 percent share of Twin Cities airline traffic. He responded that Northwest was "specifically permitted to acquire its competitor (Republic Airlines) by the federal Department of Transportation over the objection of antitrust people. It was litigated in a different forum, and Northwest won."

Pursell said that under the Reagan administration, "it's been a commonplace observation that there has been no antitrust enforcement on the federal level. This case is an indication of how the states are picking up the slack."

Vance Opperman, a partner with the Minneapolis law firm of Opperman & Paquin and a national authority on antitrust law, called the suit "a very aggressive action" on the part of the attorney general's office.

Opperman, who is not connected with the case, said state attorneys general have increasingly begun to file antitrust actions, and he cited a national case against several reinsurance companies that alleges price-fixing. Minnesota was one of four states that initiated that action, which has been joined by a total of 19 states, he said.

"There's a demonstrative need in our economy for freedom for consumers from monopolies and anticompetitive devices," said Opperman, chairman of the Minnesota Bar Association's antitrust section. "If that's not enforced vigorously at the federal level, it will be by the states."

Naegele, which has been a subsidiary of Morris Communications Corp. of Atlanta, Ga., since 1985, owns more than four out of every five billboards in the greater Twin Cities area, according to the suit.

That kind of market dominance is not unusual in the industry, according to Hal Brown, chairman of the Outdoor Advertising Association of America and a senior vice president with Gannett Company's outdoor advertising operation. He said Gannett has about 80 percent of the Kansas City and St. Louis billboard markets and nearly 90 percent in northern New Jersey. Other companies hold a similar or higher market share in Chicago, Boston and Pittsburgh, he said.

Attorney General Hubert Humphrey III issued a statement saying that although possession of a monopoly market share alone is not a violation of the antitrust law, a company with Naegele's dominance cannot use its power to restrain competition without crossing the line of legality.

The suit accuses Naegele of unlawfully restraining competition by interfering with competitors' placement of billboards, securing and enforcing unreasonable noncompetition agreements with former employees and former competitors and tying up sign locations through excessively long leases.

The attorney general's office began investigating Naegele for potential antitrust violations about two years ago, shortly after the billboard company acquired Farvue Co. Outdoor Advertising Inc., a subsidiary of Hubbard Broadcasting. At that time, according to the suit, Farvue was Naegele's next largest competitor, with more than 120 billboards.

Naegele attorney Robert Hennessey

said the Farvue purchase was simply a successful effort to regain Hubbard Broadcasting as a major client. Hubbard had started Farvue because it wanted to advertise on special "backlit" billboards that Naegele was unwilling to build, he said, and most of Farvue's billboards were used for Hubbard advertising.

The Farvue deal "was a catalyst for the investigation, because it wasn't until that acquisition was made public in the newspapers that we directed our attention at a very visible indication that the company was eliminating competition," Pursell said. He said the attorney general's office had tried to resolve the matter through informal negotiations with Naegele and filed suit when those talks broke down.

Other Naegele acquisitions cited in the suit include Meyer Outdoor Advertising in 1976; Brede Outdoor Advertising in 1980; Odegard Outdoor Advertising in 1982, and Frederickson Outdoor Advertising Co. in 1985.

Both Hennessey and Pursell agreed that a key issue in the suit is whether the outdoor advertising market is considered a separate market or part of a larger advertising market that would include newspapers, magazines, television and radio.

The attorney general's office "doesn't believe that any other form of advertising is substitutable for outdoor advertising," Hennessey said. "Factually, that's just not accurate.... When we go out into the marketplace, our sales personnel have to compete with other forms of media for advertising dollars. That is the central issue in this lawsuit."

Pursell, however, said the state contends that billboard advertising is used for different kinds of advertising messages than other media and has its own pricing structure, two criteria that make it a separate "product market" under the state law.

Q and A/Vance Opperman

## Firms keep battle gear on for copyright claims

West Publishing Co. and Mead Data Central Inc. — both vendors of computer-assisted legal research products — agreed last week to settle a copyright dispute that will result in Mead paying “substantial” although undisclosed license fees for the right to reproduce West’s copyrighted page numbering system. West’s attorney, Vance Opperman, discusses implications of the settlement and the broader issue of protecting intellectual property rights.

By John J. Oslund  
Staff Writer

**Q**

Besides the obvious benefits to your client, why is this settlement important for copyright holders?

**A**

It certainly underscores the importance of owning copyrights and defending them. It is, after all,

our valid claim of intellectual property and ownership that is resulting in the payment of significant license fees. This also underscores a trend of companies becoming more aggressive in asserting copyright and intellectual property claims.

**Q**

As a major publisher of legal documents, West developed a unique numbering system to catalog precedent-setting court cases. Because the system is more of an idea than an invention, it was protected by copyright law as opposed to patent law. What’s the difference?

**A**

Patent law has always been more concrete. Generally speaking you can point to a device and say, “This is concrete and it is novel.” In copyright law, very often the work is not concrete, it may be intellectual in a very pure sense —

Q and A continued on page 7D



Vance Opperman

## Q and A

Continued from page 1D

a play, for example. And it only has to be novel in this sense: That the person not have copied it from someone else. In copyright law, there is protection of *the expression of an idea* — not the idea itself. The idea itself is not copyrightable.

Our founding fathers established intellectual property rights before they established any other property rights under the Constitution. I think they were uniquely sensitive to the progress that would occur in this new country if you gave people the incentive that they’d get by (affording) absolute protection in their expressions.

**Q**

In an age of computer software clones and bootleg phonograph records, how has law evolved on copyright protections?

**A**

The last copyright statute we had was passed in 1909. But by the 1970s, technology was thought to be threatening copyright protection. For example, the Xerox machine. It was a time when teachers routinely, rather than having their students buy the book, would photo-reproduce by means of Xerography copies of suggested readings.

This led to a concern about how this was going to be prevented . . . and how the very high level of protection accorded copyrights was going to square with what was happening technologically. This culminated with the 1976 Copyright Revision Act.

## THE MONDAY BRIEFING / Government

### Fundraiser/Idealism tempers urge to win

By Betty Wilson  
Staff Writer

Mpls  
6-15-87

He was a radical leader of the anti-Vietnam War movement in the late 1960s.

He was a man who helped bring down the late Hubert Humphrey's presidential campaign in 1968.

Friends remember when he lived on a farm in Stillwater and nursed goats and baby chicks in the house.

Today Vance Opperman, 44, is known as a brilliant antitrust, copyright and securities lawyer and head of a prominent 19-member Minneapolis law firm. He was elected president of the Minnesota chapter of the Federal Bar Association last month, and is president of the national Committee to Support the Antitrust Laws.

He has become one of the state's premier political fund-raisers. He's sought after by nearly every DFL aspirant to high office, for both his savvy and his ability to raise money. This month his calendar is chock full of fund-raisers for DFL candidates.

In 1986 Opperman was wooed by both Gov. Rudy Perpich and George Latimer, and signed on with the governor's reelection campaign as finance director. The campaign raised almost \$1 million last year.

"We didn't beat up a lot of people or twist a lot of arms," he said, but added, "There are thousands of people who will not return my phone calls."

He's helping to organize a \$100-per-person fund-raiser for the governor Thursday night at the Northstar Hotel. About 200 people are expected, and the goal is to raise \$15,000 to \$20,000 for Perpich's unofficial travel and entertainment expenses.

Yet he says fund-raising is "just a terrible job." Why does he do it?

"Somebody has to do it. If good citizens in both parties don't do it, we will get captured by funny people who expect quid pro quo, and worse," he said.

The life of Opperman, at 22 the chairman



"Somebody has to do it (fundraising). If good citizens in both parties don't do it, we will get captured by funny people who expect quid pro quo, and worse."

- Vance Opperman,  
political fundraiser

of the radical Students for a Democratic Society in Minnesota, and the son of Dwight Opperman, president and chief executive officer of West Publishing Co. and a Republican, seems full of tension between liberalism and capitalism. Yet he says he sees no inconsistency in his past championship of liberal causes and his present life as an entrepreneur, building a big and prestigious law firm and representing corporate clients.

"I believe in winning," said Opperman.

If he's sometimes seen as hard-hitting and brash, "That may be what it takes to get (Warren) Spannaus endorsed or to get Joan (Growe) endorsed or to get (Gerry) Sikorski endorsed, or to get the governor endorsed, or to win a lawsuit or to represent my clients."

But he's also known as a warm, outgoing, caring person, quick to respond to friends and acquaintances in need. Friends say his contributions to candidates are motivated in part by his genuinely generous spirit.

On his office wall is a framed Houston Post story of Sept. 13, 1980, with the headline "Jury Decides Against Box Makers, Damages Could Exceed \$1 Billion." That was one of his first major successful class action lawsuits, in which he represented about 200 Minnesota companies charging price fixing by corrugated box companies.

In February he settled a case against General Motors in which the automaker agreed to recall all 1981-84 model "T-cars" equipped with factory-installed air conditioning and power steering, and to reimburse owners for repairs. Another lawsuit relating to "X-cars" is still pending.

His clients include establishment names such as E. F. Hutton & Co. Inc., Johnson and Johnson, West Publishing Co., the Minnesota Academy of Ophthalmologists, and the Minnesota Medical Association.

With eight people — five of them nonlawyers — working on governmental affairs, his firm has become a highly visible lobbying presence at the Legislature. Opperman bought more than 20 \$500 tickets — he can't remember how many — for one House DFL caucus fund-raiser.

One of his lobbying clients was Blue Cross and Blue Shield of Minnesota, which defeated a proposal for a 2 percent gross premiums tax on health insurance last session.

Why does he spend so much time in politics?

"I believe politics is the highest form of public service. Minnesota is unique around the country. It is absolutely clean, it really is... I want to keep it that way."

**Q**

**So practically speaking, technology had made photo reproduction so easy as to make strict enforcement of the law impossible, right?**

**A**

True. There were even proposals at the time to have meters put on copy machines. But the 1976 act codified what "fair use" was. There had been some confusion. The law set up a four-factor test. First, what was the nature of the copying? Was it done by a nonprofit or educational institution?

Second, what was the nature of the purpose of the copying. Is it for commercial use? If so, it is presumed to be not fair use.

Then there was the nature of the work copied and finally the question of public (interest). The result is that now in the case of a professor copying for research, there's no question that that is fair use.

If a professor runs off a few chapters of suggested readings for use in a class, that's probably fair use. In the case of a professor who takes a whole text book, reproduces it, sells it to his students at less than the cost of the book, that's not fair use. The 1976 copyright statute also added criminal penalties, which have been used very effectively against pirates who rip off jeans, for example, or phonograph records by printing bootleg editions.

**Q**

**So the revised law permitted limited forms of copying just as the personal computer boom was ready to sound?**

**A**

In the early 1980s, I felt that there was a certain lessening of protection for certain types of authors. There was a feeling that "Gone With the Wind" was always protected, but when it came to the question of computer display screens or operating software or little electronic blips that nobody could see, the courts seemed to have trouble.

And much of the (legal) advice being given at that time was that piracy might be allowed. And there was a proliferation of IBM clones, Apple clones, a lot of litigation in the computer software area. Spreadsheet programs were copied all over the place, sometimes blatantly. There seemed to be a lessening of the standard of absolute copyright protection primarily because there was confusion over whether these things were copyrightable, whether they had authors.

**Q**

**How long did this environment last?**

**A**

That really persisted until about 1985, when you had a number of opinions in the software area that tended to uphold software owners against cloners, copiers, pirates and others.

And also in 1985, you had the Harper Row Supreme Court decision. That was the 1,200-word excerpt on the pardon of Richard Nixon taken from President Gerald Ford's memoir that somehow The Nation magazine got its hands on and was going to publish. Harper & Row got an injunction (to prevent the magazine from publishing the excerpt) and . . . in a decision written by Justice Sandra Day O'Connor, many of the questions in the "fair use" area were answered. She said it was a commercial taking, and thus presumptively unfair and that public policy argument that the information was vital because it involved the pardon of a president was not persuasive in the face of the reasons we have copyright

laws.

The reason we have copyrights is that if people are free to copy, soon there will be nothing worth reading.

That case established for us the benchmark of the return to the traditional high-level protection given works of authorship. Since that time, generally speaking, the generators of compilation data, software programs and computer displays, have been able to get their intellectual property protected.

**Q**

**Copyright and intellectual property-right violations abroad have led to trade friction, particularly between**

**the United States and such countries as South Korea and Taiwan. Given the new trend toward more protection, what is the message for U.S. trading partners?**

**A**

I think the message is first, that authors are becoming more aggressive and more successful at defending those property rights. That means either our trading partners ought to develop their own, which is frankly what I think intellectual property creates — competition. And two, that they'd better be prepared to pay license fees. And three, that the risks of blatant misappropriation are higher.

# Business Day

The New York Times

TUESDAY, JULY 19, 1988  
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## Westlaw And Lexis Near Truce

### Press Release Is Issued Announcing Settlement But Is Later Withdrawn

By STEPHEN LABATON

The bitter legal dispute between Lexis and Westlaw, the two-largest computerized research services for lawyers, appeared on the verge of ending yesterday when a public relations firm representing Lexis sent out a press release announcing a settlement.

But late in the afternoon Michael Winter, a spokesman for Mead Data Central Inc., Lexis's parent, said the company had not yet authorized the release of the press release by Burson Marsteller, a New York public relations firm, and said the company had withdrawn the announcement.

A spokeswoman for the West Publishing Company, the parent of Westlaw, said no agreement had been signed yet, but that an announcement could be made later in the week. Other people familiar with the talks also said they expected an official settlement would be announced soon.

#### 'Major Issues' Resolved

"All the major issues have been resolved, and all that is left are the small points," said one person close to the negotiations earlier in the day.

The truce would end a three-year fight that involved a series of copyright and antitrust lawsuits filed by each company against the other in Federal courts in Minnesota and Ohio. Those suits were over a special system of legal citations that had been developed by West Publishing and adopted as the official way of citing cases by most Federal and state courts around the nation.

The battle also included skirmishes in several state legislatures over the right to be the official publisher for those states' laws.

At stake in the legal feud had been control of the fast-growing market for computerized legal research used by lawyers, judges, academics and students. Last year, the market was worth more than \$200 million in sales and has been projected by executives of Mead Data and industry analysts to grow at a rate of 20 to 30 percent annually for the next few years.

#### Exchange of Services

As outlined in the press release, the settlement would permit Mead Data, a subsidiary of Mead Inc., to use West's citation system in its Lexis data base under a special licensing agreement. In addition, Lexis would be permitted to use West's compilation of state statutes.

In exchange, Mead Data would pay West a sum of money that was not disclosed yesterday. One source said the amount would be in the tens of millions of dollars.

Trading on Wall Street ended about an hour before the announcement, which was the result of more than two months of negotiations. Mead's shares rose 12.5 cents, to 35.625, after being down for most of the day.

West Publishing is a privately owned company based in St. Paul that does not disclose its earnings or revenues, although by some estimates, the company last year had sales of about \$400 million.

For most of its 106-year existence, West has been the sole or leading publisher of state and Federal statutes and court opinions. It became a fundamental tool for lawyers and judges after developing a way to synthesize judicial opinions into neatly encapsulated principles of law.

Called the West key number system, the indexing system enables researchers to quickly find principles of law amid the hundreds of thousands of cases published each year.

Though the West key number system made the publishing company indispensable for the practice of law, it was not the system itself that was in dispute. Rather, because West is so widely used, most state and Federal courts require lawyers to cite in their briefs and motions the page and volume number of opinions in West books. In addition, legal style books insist that cases cited by lawyers and judges include the page and volume number where the decision can be found.

Lexis had sought to provide a cross-reference to those books, but had been challenged by West on the grounds that West had a copyright to "the arrangement" of the decisions in its volumes.

#### Important Research Tool

In one of the copyright trials, which ended in April, West Publishing had sought to limit Mead Data from using an important research tool called "star pagination."

Star pagination enables a user to cross-reference the court opinions in the Lexis data bank with the same page and volume number where the decision appears in West Publishing's books.

During the trial West's lawyers had argued that allowing Mead Central to use star pagination would make West's volumes obsolete. Mead Data had countercharged that West had engaged in a series of monopolistic practices and censorship that effectively limited the public's access to the courts. The judge has not yet ruled on the case.

# BUSINESS

8C/ THURSDAY, JANUARY 14, 1988

ST. PAUL PIONEER PRESS DISPATCH

## Judge dismisses Texas suit against West

**By Dave Peters**  
Staff Writer

A federal judge in Texas has dismissed a copyright lawsuit by that state's attorney general against St. Paul-based West Publishing Co.

The court said Texas Attorney General Jim Mattox had no grounds to ask for a declaration that West couldn't copyright its organization of Texas statutes.

West has for years been involved in the publishing of Texas statutes as they are passed by the Legislature. During last year's legislative session, another publisher lobbied to have the statutory headings and article numbers supplied by West declared in the public domain.

West, which claims copyright protection for those headings and numbers but not the statutes themselves, fought the

effort, which failed to win legislative approval.

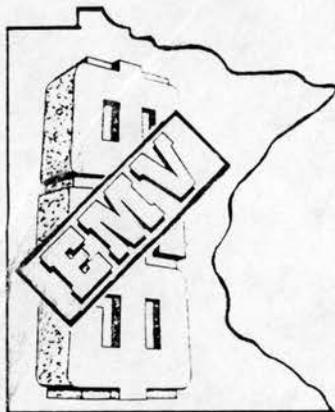
But Mattox brought the suit, which, if successful, would have allowed others to publish state statutes in the form for which West has a copyright.

U.S. District Judge Walter Smith ruled the state had failed to show any threat to it from West's copyright

claim. He therefore did not consider the actual merits of the claim and granted West's motion to dismiss the lawsuit.

James Schatz, attorney for West, said the ruling was consistent with an earlier federal court ruling in another case. That preliminary ruling in a Minneapolis case, which has yet to go to trial, said West can claim a copyright on its arrangements of judicial decisions.

# Challenging Real Property Taxes:



## What The Practitioner Needs To Know

By Richard A. Lockridge  
Alison Eckstein Colton

Property tax reform has received a great deal of attention in recent years. Calls for simplification, equity, and accountability have prompted Governor Perpich and the Legislature to take steps to unravel what has been called one of the most complex property tax systems in the country.

The 1988 Legislature made several changes to the property tax system, including replacing the classification ratios for real property with a new set of tax capacity percentages or effective tax rates. Although clarifying apportionment of the tax burden among taxpayers, these changes basically do not diminish the burden on business taxpayers, who have traditionally shouldered the greatest share of the tax burden.<sup>1</sup>

Many attorneys in Hennepin County and throughout the state probably have clients who will confront these burdens. Whether their practice involves real estate tax litigation or whether they simply have clients who experience these problems, attorneys can benefit from an understanding of the procedures for challenging real property tax assessments and familiarity with two recent significant developments in the area of real property taxation: 1) the impact of the tax court's new statutory authority to increase taxes over the amount originally determined by the assessor and 2) the tax court's practice of denying discrimination relief where the sales ratio (as adjusted) is 90 percent or greater. This article attempts to furnish an overview of these procedures and insight into their recent developments.

### MINNESOTA PROPERTY TAX OVERVIEW

All real property is required by statute to be assessed at least once every four

years.<sup>2</sup> Property is appraised based on its market value as of January 2 of the assessment year.<sup>3</sup> At least ten days before the meeting of the local board of review or equalization, taxpayers receive a notice from the county informing them of the market value for their property.<sup>4</sup> Although rarely done by commercial/industrial taxpayers, taxpayers may appeal the market value shown on the notice to the local board of review or equalization.<sup>5</sup>

For taxes assessed in 1988 and payable in 1989, tax statements are to be mailed to taxpayers by January 31, 1989, following notices of value mailed last spring.<sup>6</sup> For taxes assessed in 1989 and payable in 1990, taxpayers will receive three statements from the county: a Notice of Proposed Property Taxes sandwiched between the notice of value and the tax statement. This Notice, which incorporates new "truth in taxation" requirements, shows taxpayers what their taxes will be in the coming year if proposed budgets are approved by local governments and also will contain the date, time and place of local budget hearings.<sup>7</sup>

### CHALLENGING PROPERTY TAX ASSESSMENTS The Tax Protest Petition

A taxpayer may challenge the assessor's valuation of real property or "estimated market value" (EMV) by filing a petition in district court or in tax court. There is no need to file an administrative appeal. There are several grounds on which a taxpayer may challenge the taxes levied against property: (1) that the property "has been assessed at a valuation greater than its real or actual value;" (2) that the property has been "partially, unfairly or

unequally assessed in comparison with other property in the city or county;" (3) that the tax is illegal; (4) that the tax has been paid; or (5) that the property is exempt from the tax.<sup>8</sup>

Although district courts have dual jurisdiction with the tax court over property tax appeals, most tax cases are filed in district court and then automatically transferred to tax court. It is generally agreed that the tax court has the technical expertise and the experience to decide tax cases. Moreover, the tax court is known for its expeditious handling of tax appeals.<sup>9</sup>

Because nearly every tax petition which involves commercial real estate includes both overvaluation and unequal assessment or discrimination claims, the petition should be filed initially in district court. A claim of unequal assessment or discrimination derives from a taxpayer's constitutional right to uniformity in taxation, and the tax court lacks original jurisdiction to decide constitutional issues.<sup>10</sup>

The petition required to trigger an appeal for redetermination of value may be filed at any time following receipt of the valuation notice for the year in question but *no later* than May 15 of the year in which the taxes are payable.<sup>11</sup> To illustrate, petitions protesting taxes assessed as of January 2, 1988 for taxes payable in 1989 must be served and filed by May 15, 1989. A new petition must be filed for each year in which taxes are under review.

Regardless of whether an appeal has been filed protesting the assessor's EMV, the first half taxes must be paid when due (before May 16) or the petition will be automatically dismissed.<sup>12</sup> If nonpay-

*Continued on page 15*

## TAX — Continued

ment of taxes arises out of a mistake by a party other than the taxpayer, a petition may be reinstated.<sup>12</sup> If taxes are still under review at the time the second half payment is due (before October 16), the taxpayer may withhold 20 percent of the taxes due.<sup>13</sup> Any amounts withheld are applied against the refund, if any, determined as a result of settlement or trial.<sup>13</sup>

### TAXPAYERS' CLAIMS

The two most common claims made in taxpayer petitions are overvaluation and unequal assessment claims.

Overvaluation claims arise under Minn. Stat. §273.11, subd.1 (1986), which provides that all property shall be assessed at market value. "Market value" is defined as "the usual selling price at the place where the property to which the term is applied shall be at the time of assessment; being the price which could be obtained at private sale and not at forced sale or auction."<sup>14</sup> Land value is determined separately from improvements and buildings. This distinction is particularly important in cases involving older obsolete properties where the land may be more valuable than the improvements or structures which may be functionally and economically obsolete. The basic standard is what a willing buyer would pay, in cash, for the taxable real estate.

Assessors are required to "consider and give due weight to every element and factor affecting the market value in determining market value."<sup>15</sup> The determination of market value for property tax purposes is a fact issue. The three standard approaches to value are the market or comparable sales approach, the cost approach, and the income approach.<sup>16</sup>

Under the market approach, value is determined by evaluation of sales of comparable properties. The selling prices of comparable properties are adjusted in comparison to the subject for conditions of sale, financing terms, time of sale, location, physical characteristics of the property, and income generation characteristics.<sup>17</sup>

The income method is most applicable for appraising properties which are income-producing or which are purchased for investment. Under this approach, value is determined by estimating the anticipated income from the property, and converting that into an indication of present value.<sup>18</sup> Under the cost approach, value is based upon the cost to replace or reproduce the improvements.<sup>19</sup> The cost approach is the most useful in valuing new or nearly new

properties, and in valuing large single tenant and owner occupied industrial and manufacturing facilities.<sup>20</sup>

In a proceeding challenging real property valuation, a prima facie presumption exists that the assessor's valuation is correct, and the taxpayer has the burden of proving that the assessor's valuation is excessive.<sup>21</sup> One of the major consequences of having the burden of proof is the need for qualified expert appraisal testimony on valuation issues. Lack of a qualified expert appraisal witness almost certainly will doom a commercial taxpayer's case.<sup>22</sup> Moreover, since the tax court has the authority to increase the assessor's EMV, early contact with an experienced real estate appraiser is very important. Although infrequent, the court has occasionally increased the EMV.<sup>23</sup>

Beginning with property tax assessments for the January 2, 1986 tax year, the tax court may increase the value of property over the amount originally set

*Continued on page 16*

See 1988 Minn. Laws., Ch. 719, Art. 5, Sec. 17; See generally Comment, *The Business Property Tax and Property Tax Reform in Minnesota in 1987*, 8 Hamline J.L. & Pub. Pol'y. 113, 119 (1987); See also Fiedler, *Buildings Don't Vote*, Corporate Report Minnesota, November 1988, p. 41.

<sup>12</sup>Minn. Stat. §273.01 (1986), as amended by 1988 Minn. Laws. Ch. 719, Art. 7, Sec. 4, *Id.*

<sup>13</sup>Minn. Stat. §273.121 (1986) as amended by 1988 Minn. Laws. Ch. 719, Art. 6, Sec. 8.

<sup>14</sup>*Id.*; Minn. Stat. §274.01 (1987 Supp.) as amended by 1988 Minn. Laws. Ch. 719, Art. 7, Sec. 8.

<sup>15</sup>Minn. Stat. §276.04, subd. 3 (1987 Supp.) as amended by 1988 Minn. Laws. Ch. 719, Art. 5, Sec. 43.

<sup>16</sup>1988 Minn. Laws. Ch. 719, Art. 5, Section 30 (codified at Minn. Stat. §275.065).

<sup>17</sup>Minn. Stat. §278.01, subd. 1 (1986).

<sup>18</sup>Gustafson, *Challenging Unequal Property Tax Assessments in Minnesota*, 13 Wm. Mitchell L. Rev. 461, 463-64, n.8 (1987) (hereinafter "Gustafson").

<sup>19</sup>*J. Kuiters v. County of Freeborn*, 430 N.W.2d 461 (Minn. 1988); *Soo Line Railroad Co. v. Commissioner of Revenue*, 377 N.W.2d 453, 456, n.1 (Minn. 1985); *Erie Mining Co. v. Comm'r of Revenue*, 343 N.W.2d 261 (Minn. 1984); *In re McCannel*, 301 N.W.2d 910 (Minn. 1980).

<sup>20</sup>Minn. Stat. §278.01, subd. 1 (1986).

<sup>21</sup>Minn. Stat. §278.03 (1986).

<sup>22</sup>See *Thunderbird Motel Corp. v. County of Hennepin*, 289 Minn. 239, 183 N.W.2d 569 (1971) and *Trego Corporation v. County of Ramsey*, No. TA-1221 (Minn. Tax Ct. Jan. 11, 1988).



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<sup>23</sup>Minn. Stat. §278.03 (1986).

<sup>24</sup>A taxpayer may be relieved of its obligation to make the second half payment if permission is received from the court to continue prosecution without payment. Minn. Stat. §278.03 (1986).

<sup>25</sup>Minn. Stat. §272.03, subd. 8 (1986).

<sup>26</sup>Minn. Stat. §273.12 (1987 Supp.) (emphasis added).

<sup>27</sup>*Gamble Development Co. v. County of St. Louis*, No. 135535 (Minn. Tax Ct. July 20, 1981); *Alstores Realty, Inc. v. State*, 176 N.W.2d 112, 114 (Minn. 1970).

See generally American Institute of Real Estate Appraisers, *The Appraisal of Real Estate* at 51-52 (8th Ed. 1985) (hereinafter "The Appraisal of Real Estate").

<sup>28</sup>*Id.* at 52-53; *Englehart Building v. County of Dakota*, File No. 103974 (Minn. Tax Ct. March 31, 1988); *View Pointe v. County of Dakota*, 103767 (Minn. Tax Ct. April 6, 1988).

<sup>29</sup>*Alstores Realty, Inc. v. State*, 176 N.W.2d at 114; *The Appraisal of Real Estate* at 53.

<sup>30</sup>*Valley Craft, Inc. v. County of Wabasha*, File Nos. C-87-395, C-87-469 (Minn. Tax Ct. July 28, 1988).

<sup>31</sup>*Lamping v. County of Freeborn*, 374 N.W.2d 169, 173 (Minn. 1985); *Anacker v. County of Cottonwood*, 302 N.W.2d 342 (Minn. 1981); *In re McCannel*, 301 N.W.2d at 923; Minn. Stat. §271.06, subd. 6 (1986).

<sup>32</sup>See *G.V.J. Co. Boderman & Associates v. County of Hennepin*, No. 6030 (Minn. Tax Ct. Nov. 11, 1987); *Mr. Steak, et al. v. County of Hennepin*, No. 6029 (Minn. Tax Ct. October 19, 1987).

<sup>33</sup>See *M.C. Gresser v. County of Stearns*, File No. C4-86-1332 (Minn. Tax Ct. October 6, 1987), *pet. for review denied*, (Minn. April 26, 1988); *Otto F. Ringle v. Commissioner of Revenue*, No. 4733 (Minn. Tax Ct. January 6, 1988); *View Pointe v. Dakota County*, No. 103767 (Minn. Tax Ct. Feb. 12, 1988).

## TAX — Continued

by the assessor.<sup>26</sup> The court's new authority to increase the assessor's EMV significantly departs from prior case law, which prevented the court from increasing the EMV *even if* higher figures were supported by the evidence.<sup>27</sup>

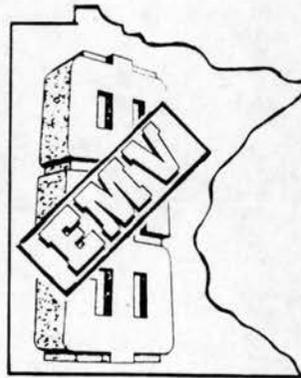
In the first test of judicial authority to raise taxes, the Minnesota Supreme Court last year rejected arguments by the county that a taxpayer should be prohibited from dismissing a tax petition when the county has evidence supporting a higher value. In rejecting Hennepin County's request to proceed, the Court stated that if the legislature "had intended to create a counterclaim that springs into being upon the filing of the tax petition, it could have used express language stating that intent."<sup>28</sup>

The Court further held that if a taxpayer is precluded from voluntarily dismissing the petition because an implicit counterclaim is created by the mere filing of a petition, the "taxpayer may hesitate to question the taxing authority's assessments at all" and this "chilling effect would have a highly

detrimental impact on the due process rights of those who pay the assessments."<sup>29</sup>

Unequal assessment claims arise when real property is valued for tax purposes "at a substantially higher percentage of its market value than is other property in the taxing district."<sup>30</sup> Such assessments violate the equal protection and uniformity requirements of the federal constitutions, respectively.<sup>31</sup>

A claim of overassessment may be made even though the property is assessed at less than its actual market value if the property is overassessed in relation to other property in the same taxing district. Market value remains the foundation of both overvaluation and unequal assessment claims. To prove unequal assessment, the taxpayer must first establish the market value of his property.<sup>32</sup>



In the leading case of *Hamm v. State*, the Minnesota Supreme Court recognized that "[t]he right to uniformity and equality [in property taxation] is the right to equal treatment in the apportionment of the tax burden."<sup>33</sup> *Hamm* required taxpayers who sought equalization relief to establish that the inequality resulted from the systematic, arbitrary or intentional undervaluation of other property. Twenty-one years later the need to prove intent was eliminated.<sup>34</sup>

The burden of proving unequal assessment, however, remains on the taxpayer. A taxpayer may not simply show that two parcels in the same area have different assessed values, but must, instead, show that "arbitrary or systematic undervaluation of these other properties exists."<sup>35</sup>

The chief method of proving arbitrary and systematic discrimination is through the use of sales ratio studies.<sup>36</sup> Sales ratio studies compare the adjusted sale prices of recent sales with the assessor's estimated market values to measure the level of assessment in a taxing district. Taxpayers may introduce sales ratio studies as a public record without the

necessity of laying a foundation.<sup>37</sup>

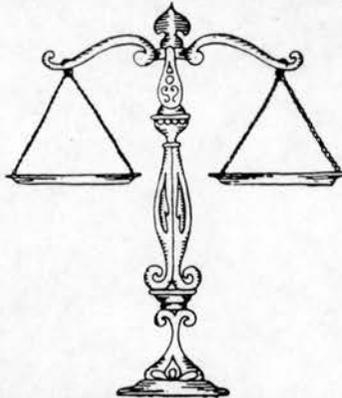
The sales ratio study establishes a *prima facie*, but not an irrebuttable, case of discrimination.<sup>38</sup> The taxing authority may, and often does, offer evidence relating to the reliability or unreliability of the study. The evidence may include "evidence of inadequate adjustment of sales prices to reflect the difference in the date of sale compared to the assessment date, and inadequate sample size."<sup>39</sup>

The taxpayer also is entitled to a refund if the property is assessed in excess of its market value, but underassessed in relation to other properties in the taxing district. In *J. Kuiters v. County of Freeborn*, the Supreme Court held that the assessment of property in excess of its market value is a violation of Minnesota law for which a right of action exists under Minn. Stat. §278.01, subd. 1.<sup>40</sup>

A critical limitation on the court's ability to grant discrimination or equalization relief is the rule developed by the tax court precluding relief if the sales ratio study after adjustments indicates a sales ratio of 90 percent or more.<sup>41</sup> In justifying the rule, the tax court follows the holding in *Hamm v. State* providing that absolute equality is not required in property taxation.<sup>42</sup>

*Continued on page 17*

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<sup>26</sup>Minn. Stat. §278.05, subd. 1.

<sup>27</sup>See *Village of Aurora v. Commissioner of Taxation*, 217 Minn. 64, 14 N.W.2d 292 (1944); *In Re McCannel*, 301 N.W.2d at 925.

<sup>28</sup>*Southdale Circle Partnership v. County of Hennepin*, 424 N.W.2d 536, 538 (Minn. 1988).

<sup>29</sup>*Id.*

<sup>30</sup>*In Re Objections to Real Property Taxes*, 353 N.W.2d 525, 529 (Minn. 1984) (hereinafter *3030 Drew*) (citations omitted).

<sup>31</sup>*J. Kuiters v. County of Freeborn*, 430 N.W.2d at 464.

<sup>32</sup>*Renneke v. County of Brown*, 97 N.W.2d 377, 380 (Minn. 1959).

<sup>33</sup>*Hamm v. State*, 255 Minn. 64, 68-70, 95 N.W.2d 649, 654-55 (Minn. 1959).

<sup>34</sup>*United National Corp. v. County of Hennepin*, 299 N.W.2d 73 (1980).

<sup>35</sup>*3030 Drew*, 353 N.W.2d at 530.

<sup>36</sup>*3030 Drew*, 353 N.W.2d at 531. See also Note, *Grounds and Procedures for Attacking Real Property Tax Assessments in Minnesota*, 4 Wm. Mitchell L. Rev. 371, 392 (1978).

<sup>37</sup>Minn. Stat. §278.05, subd. 4 (1987 Supp.); See generally *Bethune v. County of Hennepin*, 362 N.W.2d 323 (Minn. 1985).

<sup>38</sup>*Peifer, et al. v. County of Hennepin*, File No. TC-5690 (Minn. Tax. Ct. September 2, 1988); *3030 Drew*, 353 N.W.2d at 532.

<sup>39</sup>Minn. Stat. §278.05, subd. 4 (1987 Supp.).

<sup>40</sup>*Kuiters*, 430 N.W.2d at 464.

<sup>41</sup>See *Gustafson* at 470.

<sup>42</sup>See *Richard J. Schreier v. County of Ramsey*, File No. TA-1393 (Minn. Tax Ct. June 17, 1988) (emphasis added).

## TAX — Continued

Petitioners have criticized the 90 percent rule for its rigidity. In *Richard J. Schreier v. County of Ramsey*, the petitioner argued that while the "disparity [based on the median level of assessment] may be insignificant, the dollars at issue are not." The tax court responded by stating that it has consistently rejected this argument:

After dozens of cases this court has evolved the rule that where the court finds the general level of assessment exceeds 90 percent, no "substantial" inequality exists that compels further reduction for equalization. To demand a higher percentage would merely cause other property to be overvalued . . .<sup>43</sup>

If sales ratio studies disclose that the assessor has valued property "reasonably close to their fair market values," the court will not grant discrimination relief.<sup>44</sup>

In justifying application of the 90 percent rule, the tax court often cites two cases, *Federal Reserve Bank of Minneapolis v. County of Hennepin*, 313 N.W.2d 619 (Minn. 1981) (hereinafter *Federal Reserve Bank*) and *Fairmount Greens v. Hennepin County*, File Nos. TC-3207 and TC-4104 (Minn. Tax Ct. Nov. 22, 1985, and Dec. 20, 1985), *aff'd without opinion*, 387 N.W.2d 438 (Minn. 1986). The tax court's position is not entirely supported by these two cases.

In *Federal Reserve Bank*, the Supreme Court did not address the question of whether a blanket application of a 90 percent rule is correct in every case. In *Fairmount Greens*, the only case to reach the Minnesota Supreme Court in which the taxpayer was specifically denied discrimination relief based on the 90 percent rule, the tax court's decision was affirmed without an opinion. Such a decision is without precedential value.<sup>45</sup>

Application of the 90 percent rule is not supported by any statutory basis. While Minn. Stat. §278.01, subd. 2 (1986) prevents *homestead* taxpayers from claiming unequal assessment unless their property has been "assessed at a valuation which exceeds by ten percent or more the valuation which the parcel would have if it were valued at the average assessment/sales ratio for real property in that class . . ." no similar provision exists for commercial and industrial property. Moreover, even though at one time a statute gave assessors a ten percent margin of error in valuing real property, it was repealed in 1986.<sup>46</sup> Finally, neither the statute nor the rule has ever been applied to limit discrimination relief where sales ratio studies indicate an adjusted ratio of less

than 90 percent. In that instance, taxpayers are entitled to full relief.<sup>47</sup>

One former member of the tax court, the late Honorable Carl A. Jensen, while endorsing the concept of "substantial inequality" as a ground for discrimination relief, criticized the blanket application of a 90 percent rule in every case:

If the evidence clearly shows that the assessor's value of a particular piece of property is 100 percent of the actual value, and if the adjusted assessment/sales ratio with a large number of samples indicates a median value of similar properties at 90 percent of actual value, it would appear that the appealing taxpayer should have some relief since, as we have indicated above, this could mean a substantial amount of money on \$10,000,000.<sup>48</sup>

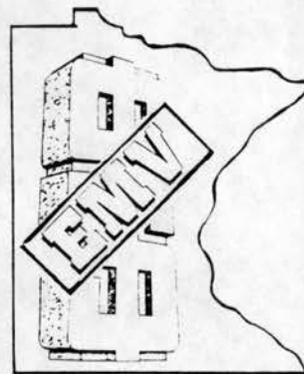
Therefore, while an argument may be made for allowing the court some discretion in fashioning discrimination relief, the blanket application of a 90 percent rule as a basis for relief is arbitrary. It allows certain taxpayers full relief in those districts where ratios are less than 90 percent and denies it to others in districts where ratios are above 90 percent regardless of the economic impact on individual taxpayers.

In applying this dechious rule, the tax court is essentially trying to accomplish two goals: to set a standard for constitutional relief while at the same time determining an acceptable margin of error in the assessment of property for real estate tax purposes. These two standards, while laudable, are dissimilar.

## CONCLUSION

An understanding of these basic principles, along with the two recent

doctrinal developments, should assist lawyers in grappling with real estate taxation issues on behalf of commercial clients. ■



<sup>43</sup>*Schreier* (quoting *Fairmount Greens v. County of Hennepin*, File Nos. TC-3207 and TC-4104 (Minn. Tax Ct. Nov. 22, 1985); *aff'd without opinion*, 387 N.W.2d 438 (Minn. 1986)).

<sup>44</sup>*Id.*

<sup>45</sup>Minn. R. Civ. App. P. 136.01, subd. 1(b).

<sup>46</sup>Minn. Stat. §278.05, subd. 4 (1984) provided in pertinent part, as follows:

If the above criteria are met . . . the reduction shall reflect only the difference between the assessment/sales ratio of the subject property and 110 percent of the median ratio of the class of property of the subject property.

See Act of Apr. 25, 1984, Ch. 502, Art. 11, Sec. 5, 1984 Minn. Laws 493, 605-606; repealed, Act of Apr. 1, 1986, Ch. 473, Sec. 6, 1986 Minn. Laws 1080, 1083.

<sup>47</sup>*Prudential Insurance Co. of America v. County of Hennepin*, File No. TC-4860 (Minn. Tax Ct. Sept. 10, 1987) (tax court rejected the county's argument that if the assessment level is 85 percent, the petitioner should only receive a five percent reduction under [former] Minn. Stat. §278.05, subd. 4).

<sup>48</sup>*M.A. Mortenson Co. v. County of Hennepin*, File Nos. TC-3350 and 3352 (Minn. Tax Ct. June 25, 1985). *But see Oscar Roberts Co. v. County of Hennepin*, Nos. TC-3129 and TC 3929 (Minn. Tax Ct. Dec. 5, 1985).

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AGREEMENT

This Agreement between Opperman Heins and Paquin ("OH&P") and the Regional Transit Board of the State of Minnesota hereinafter ("RTB") is effective May \_\_\_ 1989.

NOW, THEREFORE the parties agree as follows:

1. Term of the Agreement. This Agreement shall commence May \_\_\_\_\_ 1989 and terminate May 31, 1989. This Agreement may be extended by mutual agreement of the parties. This Agreement may be cancelled by either party, but either party must give five days written notice to the other to terminate.
2. Consideration. The RTB shall pay OH&P on an hourly basis for legislative services up to an overall fee cap of Sixteen Thousand dollars (\$16,000). These fees shall be paid for upon receipt of OH&P's invoice. If OH&P's hourly fees exceed the fee cap, the RTB may pay at its discretion the fees in excess of its cap. In

addition to fees, OH&P will also bill for its out of pocket expenses such as copying, mileage, parking, and entertainment. Any individual expenses in excess of \$100 must be approved by the RTB liaison in advance.

3. Personnel. OH&P will provide the necessary staff to accomplish the legislative goals of the RTB. Specifically, H. Theodore Grindal and Thomas A. Satre will be (assigned and) the main OH&P contacts with the RTB. The hourly rate of H. Theodore Grindal is One Hundred and Thirty-Five dollars an hour (\$135.00) and the hourly rate of Thomas A. Satre is Seventy-Five dollars (\$75.00) an hour. Other OH&P staff will be employed as needed to accomplish the efforts on behalf of the RTB.
4. Liaison with the Board. The RTB shall designate a legislative liaison of one or more of its members to whom OH&P will report. It will be the responsibility of the legislative liaison to in turn communicate with the other members of the RTB Board between regularly scheduled or specially scheduled meetings.
5. Duties of OH&P. Mr. Grindal and Mr. Satre will register with the Minnesota Ethical Practices Board effective immediately for representation of the RTB. OH&P will monitor legislation of interest to the RTB and advocate positions duly determined by the RTB or as directed by the legislative liaison. Unless

otherwise directed by the RTB or the legislative liaison, OH&P will not take direction from RTB staff.

6. Conflict of Interest. OH&P has no current legislative or legal clients that it believes conflicts with representation of the RTB for the term of this agreement. If a prior or existing client's interest(s) conflict with the interest of the RTB, or if the RTB believes that a prior or existing client of OH&P interest conflict with the RTB, OH&P will immediately withdraw from representation of the RTB.
7. The Entire Agreement. This document is the entire agreement between the parties. Amendments must be in writing and executed by both parties.
8. Effective Date. This Agreement is effective on the date first written above.

REGIONAL TRANSIT BOARD

BY: \_\_\_\_\_  
Its

OPPERMAN HEINS & PAQUIN

BY: \_\_\_\_\_  
Its Managing Partner