



# LINCOLN BAR ASSOCIATION

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Winter 2015

## President's Perspective

by Elizabeth Elliott, LBA President



Although 2014 has been an extraordinary year, the yearly reflection article is just not my way of doing things. I have no fancy quotes or any words of wisdom for you, and no one really wants to hear my ramblings, so I'm going to make this short and simple: I wish all of you and your families a wonderful holiday season and a healthy and peaceful New Year!

I look forward to kicking off 2015 with all of you at our January CLE event. ■

### Notes of importance:

**Reminder: Our clinics now start at 5:30 with dinner to follow around 6:45p.m.**

**Check us out on the web!  
We are frequently adding announcements, such as CLE material and job openings, to our website.  
Also, like us on Facebook.**

## Annual Meet the Judges is a Success

by Elizabeth Elliott, LBA President

In December, LBA had its annual Meet the Judges event. With 24 judges, both active and retired, from eight different courts in attendance, as well as five law students and countless attorneys, this year's event was a huge success!

I look forward to kicking off 2015 with all of you at our January CLE event.

Judges in Attendance:

### Nebraska Supreme Court

Chief Justice Michael Heavican  
Justice William Cassel  
Justice Kenneth Stephan

### Nebraska Court of Appeals

Judge Riko Bishop

### United States District Court

Judge John Gerrard  
Judge Richard Kopf

### United States Court of Appeals for 8th Circuit

Judge Arlen Beam

### Lancaster County District Court

Judge Sam Van Pelt  
Judge Jeffre Chevront  
Judge Stephanie Stacy  
Judge John Colborn  
Judge Jodi Nelson  
Judge Andrew Jacobsen  
Judge Lori Maret

### Lancaster County Court

Judge Donald Grant  
Judge Tim Phillips  
Judge Laurie Yardley  
Judge Jim Foster  
Judge Matthew Acton  
Judge Holly Parsley  
Judge Susan Strong  
Judge Tom Fox

### Workers' Compensation Court

Judge Mark Buchholz

### Social Security Administrative Law

Judge Emily Cameron Shattil

I cannot thank all of you enough for taking time out of your busy schedules to be part of this event!! ■





*In Memoriam –*

# Lincoln Attorneys We Lost in 2014

reprinted courtesy of the Nebraska State Bar Association

## John Mayer Gradwohl

May 2, 1930-Febr. 2, 2014

During the five decades of his teaching career, John Gradwohl directed the initial computerization of Nebraska statutes; organized the first dual-degree programs of the University of Nebraska College of Law; was a leader in developing continuing legal education, including the Great Plains Federal Tax Institute and Nebraska Continuing Legal Education Corporation; initiated the concept of the Nebraska How to Practice manuals; and instituted the law college's first cooperative academic agreements in China, developing and teaching programs for the law departments of four Chinese universities, Chinese Ministry of Education, and Shanghai Judicial Institute, and coauthoring an English/Mandarin textbook on comparative international criminal procedure published by the Asia Foundation. He served as a judge of the Court of Industrial Relations, and held the Ross McCollum and Judge Harry A. Spencer distinguished teaching chairs. Gradwohl's achievements were recognized with awards from the NSBA, Nebraska Alumni Association, College of Law Alumni Council, and the American Law Institute of the ABA. Above all, he cared deeply for his students, personally and as emerging lawyers. He was passionate about seeking equality and justice, and received special recognition from the Black Law Students Association for his dedication to diversity in the law college and community.

## William J. Orester

Dec. 28, 1931-Jan. 14, 2014

William J. Orester, 82, passed away January 14, 2014. Bill was born December 28, 1931, in Rock Springs Wyoming to Steve and Eleanor Orester. He attended Nebraska School for the Blind. Bill then graduated from Creighton University with a history

major and then attended Creighton University School of Law, achieving his J.D. He settled in Lincoln Nebraska and was an Assistant Attorney General for the State of Nebraska for 40 years and a State Bar Association member for 50 years. Bill was a member of the American Council for the Blind for many years. He was also a member of the Bethany Lions Club. Bill attended Leader Dogs and obtained several guide dogs from the school. Bill is preceded in death by his parents; sister Wells; brother Steve; and first wife Betty.

He is survived by his wife, Mary Susan; daughters, Barb (Ed) Kunz of Olathe Kansas and Gloria (Kevin) Rediger of Lincoln; grandsons, Andy and Alex Kunz; granddaughter, Carly Rediger; and his brother, Don (Jean) Orester of Rock Springs, Wyoming.

## Charles I. Scudder Jr.

Nov. 3, 1931-Jan. 2, 2014

Charlie I. Scudder Jr. was born to Grace and Charlie Scudder Sr. in Juniata, NE on November 3, 1931. He passed away on January 2, 2014. Charles graduated from UNO and the Creighton University School of Law. He worked as a Legal Aid attorney, as a sole practitioner, and as a Hearing Examiner for the Nebraska Equal Opportunity Commission. Charles and Barbara were original members of the Omaha Folk Song Society. He was a gardener who loved to grow vegetables and share them with friends and the Foodbank for the Heartland. Over the years

Charles was a mentor to local youth, an active member of Shape Note Omaha, a supporter of local arts and artists, and a regular participant in numerous bowling leagues, book clubs, and other groups.

He is survived by his sisters, Rose, Pat, Sharon; his children, Michael, of Rhinebeck, NY, Steven (Donna), of Concord, NH, Aimee, of Lincoln, NE,

Kevin (Anna), of Seattle, WA, Ellen, of Hampton Falls, NH, Melissa (Gary), of Ashland, OR; and eleven grandchildren. Charles' wife, Barbara, predeceased him.

## Shane Chris Siebert

June 19, 1974-Febr. 20, 2014

Shane grew up in Henderson Nebraska and graduated from UNL law school in 2003. Shane, his wife Tina, and their son Eli made their home in Lincoln, Nebraska.

Shane was an avid Husker Basketball fan and was always up for a game of softball or foosball with friends. During the summer you could find Shane and his family camping and enjoying time outdoors.

Shane was a member of Nebraska Diplomats and the Nebraska State Bar Association.

He was practicing at McGladrey in Omaha, NE prior to suffering a cerebral aneurysm in 2009. Shane passed away February 20, 2014 from complications related to the aneurysm.

## John W. "Jack" Stewart

Sept. 3, 1920-Jan. 15, 2014

John W. Stewart ("Jack"), died January 15, 2014. A lifetime resident of Lincoln,

Jack practiced law here for 42 years, and during those years played an active role in community organizations, serving at various times as chairman of the governing boards of Nebraska Wesleyan University, Bryan Memorial Hospital, Lancaster County Red Cross, United Way, Lincoln Bar Association, and St. Paul United Methodist Church. As a student at the University of Nebraska, he was a member of Beta Theta Pi fraternity, and was elected to Phi Beta Kappa, Beta Gamma Sigma, and Order of the Coif for his scholastic achievements. For his service as an infantry rifle platoon leader in Europe during World War II, he

*(continued on page 3)*



**In Memoriam ...** (continued from page 2)

was awarded the Combat Infantryman Medal, Silver Star, Bronze Star, and Purple Heart. After retiring from the practice of law in 1988, he wrote a book about his World War II experiences, including those as a POW.

Jack is survived by his wife, Jo, and by their three children: Jack (Thurid), of Munich, Germany; John, of Sedalia, Colorado; Ann Lundy, of Lincoln; and three grandchildren.

**John G. Taylor**

**June 16, 1952-Jan. 29, 2014**

Hailing from Norfolk, NE, John Taylor, a man of good cheer and good works, earned his B.S. in Business Administration, Economics, and English from UNL in 1978. From 1980 till 1995 he chaired Lincoln's Board of Zoning

Appeals. After shouldering several positions at the Lincoln Action Program, in 1986 he became Executive Director of the Nebraska Civil Liberties Union (now ACLU of Nebraska) and over the next three-and-a-half years fought to protect individual rights while guiding NCLU through difficult times.

During the late 1970s and for the rest of his life, John championed LGBT rights in Lincoln and throughout the state. In the 1980s he nurtured the organization now known as Nebraskans for Alternatives to the Death Penalty through its infancy.

His NCLU and gay rights service, further piqued by work as a legal secretary and law clerk, propelled John to the University of Nebraska Law School, where he earned his J.D. in 1995, subsequently engaging in private practice till his 2006 retirement. For eight years he also served as adjunct instructor at Doane College Lincoln.

The advancement of justice and equality will remain John Taylor's enduring legacy.

**The Honorable Earl J. Witthoff**

**Febr. 8, 1935-Febr. 16, 2014**

Earl was one of those people you just

wanted to know and spend time with. Earl was one of the kindest, gentlest, most even-keeled people we have ever had the privilege to know. He was intelligent, well-read, funny. Over the years, we never heard him raise his voice, say an unkind word about anyone or become riled up about anything. He was just the kind of temperament role model it was impossible to emulate. It was an honor to know Earl as an attorney and to be his colleagues on the bench. He was a wise and valued mentor of many.

He was born on February 8, 1935 and told his last story on February 16, 2014. He served as a district judge for twenty years before his retirement, having been appointed by Governor Orr in 1988. After being admitted to the Bar in 1961 he served in the Adjutant General Corp and was in private practice with the firm now known as Perry, Guthery, Haase and Gessford before taking the bench. Earl loved being a lawyer and judge, but he loved his family even more. His entire being lit up when he talked about his children and grandchildren. Earl left two sons, three grandsons, step children and wife, M. Jane Ford Witthoff. He was preceded in death

*(continued on page 4)*

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We'd love to help you promote your practice or business or find needed personnel. Per issue rates:

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For more information, contact Greg Walklin at gregory.walklin@nebraska.gov  
 The LBA Newsletter is published four times a year.

The LBA Board of Trustees reserves the right to refuse any advertisement it deems inappropriate for publication.



# LBA Ethics Clinic

by Sarah Newell

On November 20th, the Lincoln Bar Association (LBA) hosted Rick Allan, Director of the Nebraska Lawyers Assistance Program (NLAP), presenting on “Dealing with Burnout—Surviving the Stress of Lawyering and Life.” In addition to qualifying for an ever-coveted hour of ethics credit, Allan educated attendees on finding a proper work-life balance. Statistics show that 33 percent of full-time attorneys work 50 or more hours per week, with many working even more. Similarly, the legal profession tends to attract those whose personalities predispose them to burnout, such as those

with a high need for control, perfectionism, over-dedication, idealism, or those who are overly empathic and general “workaholics.” He explained that exhaustion, fatigue, detachment, cynicism, irritability, annoyance, and boredom are common signs of burnout. By contrast, burnout can also manifest as vicarious trauma or compassion fatigue, wherein an attorney is incapable of “letting go” of work-related matters, or may develop an inappropriate attachment or compulsive desire to help certain clients.

Having described everyone in attendance, he explained the need to dele-

gate tasks and establish boundaries and realistic goals with clients, along with the need for humor, support systems, and exercise. He also emphasized the need to find fulfillment outside the office through hobbies, vacations, and family. Recognizing that financial stressors can also contribute to burnout, Allan also suggested attorneys compose a mental inventory of things that give them meaning, things that drew them to the law in the first place, their contribution to the community, and recognizing their own symptoms of burnout. He also provided the NLAP toll-free hotline: (888)584-6527.

LBA thanks Allan for taking the time to shine a light on a topic with such broad impact. ■

## In Memoriam ... (continued from page 3)

by wives Carolyn and Lynne. We have all been blessed by being touched by him. Dang we miss him.

### Richard R. Wood

**Dec. 2, 1937-Dec. 2, 2013**

Richard R. Wood, age 76, of Lincoln, Nebraska, died December 2, 2013. He was born December 2, 1937 in Iowa City, Iowa to Dr. Maynard A. Wood and Georgia (McCollister) Wood. Richard married Sandra Dian Schneider on June 13, 1959 in Ft. Madison, Iowa. He was a graduate of Lincoln High School, the University of Iowa (Bachelor of Arts), and the University of Nebraska College of Law (Juris Doctor).

He served in the U.S. Army, where he achieved the rank of Infantry Captain. After his military service, he returned to Lincoln with his family and started his legal career that included serving for 5 years as the City Attorney for the City of Lincoln and 29 years as Vice President and General Counsel of the University of Nebraska.

A 60+ year member of Westminster Presbyterian Church, he was also a member of the Lincoln High School

Athletic Hall of Fame, a member of Phi Delta Theta fraternity, and was a Varsity Letterman at the University of Iowa. He was also a past member of the Lincoln Charter Revision Committee, the Nebraska Power Review Board, the National Institute of Municipal Law Officers, the National Association of College and University Attorneys, a Fellow of the Nebraska State Bar Foundation, and was the Vice President and General Counsel Emeritus of the University of Nebraska.

Richard is survived by his second wife, Larysa; daughter and son-in-law Cyndy and Pete Maddux, Lincoln; daughter and son-in-law Gretchen and Brice Middleton and grandsons William and Matthew, Lincoln; son and daughter-in-law Brian and Sarah Wood and grandsons Aaron and Raine, Bozeman, MT; son Richard McCollister Wood and grandson Logan, Lincoln; three brothers Larry (Sue), Alan (Julie), and David (Ann) Wood; sister-in-law Jacqueline Griswold; step-son Sergy Paletski; and many nieces and nephews. He is preceded in death by his beloved first wife Sandra, his parents, and niece Catharine.

### Corliss G. Young

**August 20, 1955-April 30, 2014**

On April 30, 2014, at the age of 58, Corliss lost her long battle with M.S. and a brain trauma injury from a bike fall years ago. She is survived by her brother, Dave, his wife Pam and various aunts, uncles, cousins and a niece. She was preceded in death by her mother and father.

Corliss graduated with her Juris Doctor from UNL Law College and proceeded to become a valued aide for the late Senator Jerome Warner until her brain trauma injury affected her short term memory. Her diligent work on the State Constitution is still used for references even today.

Outside work, Corliss was an avid biker, artist, musician, gardener and was passionate about the American Indian. Her portrait of Senator Warner hung in the Capitol for a while. She signed her paintings “Aun,” which, she said was Lakota for “With the wind.” ■



# LANCASTER COUNTY ALIMONY REPORTER

Send your contributions to the County Alimony Reporter to: Deanna Lubken, Office Manager/Legal Assistant, University of Nebraska College of Law, Civil Clinical Law Program, 172 Welpton Courtroom, Lincoln, NE 68583-0902

## CONTESTED CASES

### Honorable Jeffre Chevront

Term of alimony: 10 years

Total alimony: \$350/month for 120 months \$42,000

Term of alimony as a percentage of length of marriage: 33%

Husband's age: Unknown; Wife's age: Unknown; Length of marriage: 30 years

Husband's income: \$28,698/year (earned during 2012); Wife's income: 0 (earned during 2012)

No minor children

**Judge's reasons for alimony award:**  
None given

### Honorable Karen B. Flowers

Term of alimony: None

Husband's age: Unknown; Wife's age: Unknown; Length of marriage: 16 years

Husband's income: \$40,992/year; Wife's income: \$9,144/year

Four minor children, ages 17, 14, 12 and 12

**Judge's reasons for non-award:**

- Found that Husband did not have the ability to pay alimony once he had met his obligations to the children;
- This was true even if Husband's expenses were pared down considerably;

- It should not be a surprise to anyone that there simply wasn't enough money to go around.

### Honorable Andrew R. Jacobsen

Term of alimony: None

Husband's age: Unknown; Wife's age: Unknown; Length of marriage: 4.5 years

Husband's income: Unknown; Wife's income: Unknown

No minor children

**Judge's reasons for non-award:**

- There was no evidence that Wife interrupted her education or a career as the result of the marriage or suffered an economic disadvantage;
- Having regard for the evidence and considering the criteria set forth in Neb. Rev. Stat. § 42-365, Wife's request for alimony was denied.

### Honorable Paul D. Merritt, Jr.

Term of alimony: Lifetime

Total alimony: \$1,000/month

Husband's age: 67; Wife's age: 65; Length of marriage: 14 years

Husband's income: \$52,752; Wife's income: approximately \$19,378/year

Recipient's income as a percentage of payor's income: 37%

No minor children

**Judge's reasons for alimony award:**

- Parties were married in September 1999;
- Husband filed his Complaint for Dissolution in August 2013;
- Parties were married for virtually 14 years prior to the filing;
- The Court found this to be a long-term marriage;
- Husband was 67 years old;
- When the parties married, Husband was working as a manager at an automobile repair shop;
- Husband was fired from that job in January 2007 and had been fully retired ever since;
- Husband was a 100% disabled Vietnam veteran;
- Husband received approximately \$4,555 per month (\$3,073 VA disability, plus \$1,482 Social Security);
- Husband's VA disability would be reduced by \$159.36 per month when the decree was entered;
- Husband had a number of health issues;
- Wife was 65 years old and had no disabilities;
- In 1998, Wife received a degree in office administration/technology (this education was paid for by a program intended to re-educate Wife due to an injury she received during a previous employment);

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- When the parties married, Wife was working as a secretary, a job she started in February, 1999;
- In September 2007, nine months after Husband retired, and when she was 60, Wife, at Husband's urging, retired;
- Wife has been fully retired since then;
- When Wife retired, she was taking home around \$20,000 a year and had health insurance and retirement, which included her contributions being matched, provided to her as part of her employment;
- When she was 62, Wife applied early for Social Security;
- At the time of trial, Wife received Social Security of \$531.50 per month (that amount included the deduction of the cost associated with the Medicare Prescription Drug Plan);
- Wife had filed over 50 applications seeking employment and had five interviews;
- At the time of trial, she was working at a grocery store part-time, working 20 to 30 hours a week at \$10 per hour, as a "porter" (i.e., she swept floors, cleaned bathrooms, etc.);
- Wife wondered how long she could keep that employment, since it required her to be on her feet the whole time;
- Wife grossed, depending on the number of hours she worked, between \$200 and \$300 a week;
- Husband had monthly expenses totaling approximately \$2,070;
- Those monthly expenses included Menard's of \$300, Dish Network of \$100, cell phones of \$156, Medicare Supplement of \$140, and groceries of \$400;
- In addition, Husband estimated that borrowing \$70,000 (he owed Wife \$61,000, due within 60 days of the filing of the decree) would add around \$520 per month to his expenses;
- Wife had monthly expenses totaling \$2,507;
- Those monthly expenses included food of \$300, land telephone of \$71, cell phone of \$100, cable of \$109, medical-related of \$442, and entertainment of \$150;
- No children were born during the parties' marriage;
- Neither party had an educational opportunity interrupted by the marriage;
- Wife was employed when the parties were married and, when she was 60 and at Husband's urging, she retired from a job from which she was taking home around \$20,000 per year;
- Each of the parties made contributions to the marriage (e.g., Husband from his 401(k) when he left his employment and Wife from an inheritance she had when the parties married;
- The Court agreed with Wife's assessment that, as a result of the parties' divorce, her life had changed dramatically, while Husband's life had changed very little, if any;
- Husband continued to golf five days a week, between March and October (according to Husband, due to his disabilities, golf is not a pleasurable experience for him, however, he continued doing it because it was recommended by the VA);
- Husband continued to live in the home (he was very active in maintaining the pond) in which the parties lived during their marriage;
- Wife was renting a duplex;
- Husband argued that Wife was not entitled to any spousal support;
- Husband's position was that his VA disability benefits should not be considered in determining the question of spousal support;
- Husband's position was not supported by the law;
- Wife, on the other hand, argued for lifetime spousal support;
- Wife described addressing a spousal support request as being like a three-legged stool (that is, a court should look at the longevity of the parties' marriage, the disparity in the income of the parties, and the need of the party requesting spousal support);
- The Court did not disagree;
- The linchpin to that analogy was reasonableness;
- The income of \$4,395 (\$4,555 - 160) available to Husband was significantly more than the income of around \$1,400 that should be available to Wife, if she would be able to work at her current job for an average of 25 hours per week;
- Regardless of Husband's health issues, he should have continued to have available to him the income available to him at the time of trial;
- At Wife's age, and with her background, there was absolutely no evidence from which the Court could find that the Wife would be able to secure different employment that would pay her more money and/or offer her more hours per week;
- According to the 1980 Standard Ordinary Mortality Table found at the home page of the Nebraska Legislature, Husband had a life expectancy of 12.46 years and Wife had a life expectancy of 16.95;
- The Court imagined, with the passage of over 30 years since the development of that table, the parties' life expectancies would actually be longer and it would not be unimaginable, therefore, that a life-

(continued)



time award of spousal support could exceed the length of the parties' marriage;

- While that was a factor the Court considered, it was not, in and of itself, the controlling factor.

### Honorable Robert R. Otte

Term of alimony: None

Husband's age: Unknown; Wife's age: Unknown; Length of marriage: 13 years

Husband's income: \$46,000/year; Wife's income: \$14,400/year

Three minor children, ages 9, 7 and 4

Judge's reasons for non-award: None given

### Honorable Stephanie F. Stacy

Alimony: None

Husband's age: Unknown; Wife's age: Unknown; Length of marriage: approximately 6 years

Husband's income: \$40,000/year approximately; Wife's income: 0

No minor children

### Judge's reason for non-award:

- Based on the evidence at trial and taking into consideration the factors it was required to consider (set forth in § 42-365), did not believe this was an appropriate case for an award of alimony.

### Unusual circumstance:

- Wife appealed the Court's decision to the Court of Appeals.

### Court of Appeals' reason for affirming the district court's decision:

- Parties' marriage was of a relatively short duration—approximately six years prior to the filing of the dissolution action, but the record reflected that they separated just 3½ years after marrying in July 2006;
- Both parties were employed at the time they married;
- The evidence did not reflect the age or education level of either party, but neither party testified they interrupted a career or education during the marriage;
- Parties had no children during the marriage;
- Neither party supported any minor children;

- Pursuant to the property settlement agreement, Wife would receive a portion of husband's retirement account and Husband agreed to pay a \$3,357.85 judgment against Wife for an unpaid medical debt;
- The evidence at trial generally reflected that Husband, earning \$40,000 per year, financially supported the parties throughout the marriage and during the pendency of the dissolution action (both as court-ordered and voluntarily);
- While Wife testified that her asthma-related health problems rendered her unable to work, no medical evidence was offered to document her health condition's impact on her ability to work;
- Noted that Wife's application for Social Security Disability benefits was denied;
- Although a disparity in income may have partially justified an award of alimony, in light of the other factors the trial court was to consider in awarding alimony, could not say the trial court abused its discretion in denying Wife an award of alimony.

## LBA Social Networking

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**Lincoln Bar Association Newsletter**

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