

MSBA

Legal News Digest

Updated October 15

Next Update: October 22

Minnesota

Front Page

Bar News

Bar Talk

Minnesota

News

Judges &
Lawyers



Check out our
[online classified ads.](#)
Updated weekly.

Simplify, Simplify
practicelaw.org

Weeks after two students were fatally shot in a central Minnesota high school and a five-year-old boy died from a bullet in Duluth, top prosecutors in 10 mostly outstate Minnesota counties stepped up efforts Tuesday to combat gun violence. They vowed to work with federal prosecutors to take gun crimes to whichever court has a stiffer penalty -- state or federal. U.S. Attorney Tom Heffelfinger said recent gun law changes and shootings presented a "clear call" for law enforcement authorities to recommit themselves to enforcing gun laws.

[STAR TRIBUNE](#)

[Top](#)

J. Thomas Mott, who heads the state's conference of chief judges, said he thinks metal detectors should be installed in the entrances of every county courthouse in Minnesota. Across the country, violence occurs in both rural and urban courthouses, he noted. "It ought to be a wake-up call to everyone in the state that this could happen any day at any time in any one of our courthouses that don't have screening," said Mott, who is Ramsey County's chief judge. "There is a very real and substantial threat to the public in these buildings, and it's negligent not to address that in some fashion." Some counties set up metal detectors in specific areas or outside courtrooms in high-profile criminal trials, but few put them at the front door of the courthouse. [STAR TRIBUNE](#)

[Top](#)

The attorney for the woman accused of killing one person and injuring another in the Hennepin County Government Center said Friday that he's considering asking that her trial be moved. "I can't think of anything more unfair than for [Susan Berkovitz] to go on trial in the building where the incident occurred," said her public defender, Daniel Homstad, after her court appearance Friday. "The courthouse is filled with scared judges and jurors now, and I can only imagine what it will be like on the day of trial," he said. [STAR TRIBUNE](#) | [PIONEER PRESS](#)

[Top](#)

- Attorney Richard Hendrickson strolled into a conference room Monday morning wearing a button-down shirt and carrying a leather-bound folder, looking like a typical businessman. A small, mole-like scar on his neck was one of the only visible signs that he has beaten incredible odds, surviving a bullet that had ricocheted inside his neck just two weeks ago. Had the bullet bored through him a millimeter in any direction, he said, he could have been hurt substantially, or even paralyzed. "You're looking at one very lucky guy," was the first thing he said to a throng of cameras and reporters in a conference room at Hennepin County Medical Center, where he was treated. He was released from the hospital on Friday. "It's a joy to be alive." Hendrickson, 53, of Crystal, was one of two people shot in the Hennepin County Government Center on Sept. 29 by a gun-toting woman. Susan Berkovitz has been indicted in the shooting of her cousin, Shelley Joseph-Kordell, and Hendrickson, who was Joseph-Kordell's attorney. Joseph-Kordell died within two hours of the shooting. Berkovitz had been upset about the handling of her father's estate, of which Joseph Kordell was conservator. [STAR TRIBUNE](#)

[Top](#)

- My joy at just plain being alive — being able to walk, being able to talk and hopefully get back to work within a relatively short period of time — is tempered by the sadness of this entire event," Hendrickson said. In a generally upbeat 20-minute news conference, Hendrickson made his first public comments on the Sept. 29 shooting, which killed Shelley Joseph-Kordell, 56, of Minnetonka and left her cousin Susan Rae Berkovitz, 52, of St. Paul in jail facing first-degree murder and attempted murder charges. [PIONEER PRESS](#)

[Top](#)


 Feedback

 Court
Ops

MSBA CourtOps:

The easiest, fastest way to get state & federal rulings while they're hot.

 Member
Discounts

mnbar.org

Change your email

If you look up legal quandary in the dictionary this week, you just might find a picture of Ramsey County Attorney Susan Gaertner accompanying the text. Gaertner is seeking to try as an adult a 14-year-old St. Paul girl who allegedly strangled her newborn son with a sock 12 days ago and placed the dead infant in a shoebox shortly after surreptitiously giving birth in the middle of the night inside her parents' home. No question, it's a horrible act. Who in their right mind would commit such an atrocity? This kid obviously needs help. But is adult prison the answer? That's the troubling disconnect here, one that merits scrutiny and legitimately calls into question Gaertner's actions. Gaertner's office also filed statutory rape charges against the baby's 22-year-old father for having sex with a minor. So, in essence, county prosecutors believe the same girl was legally immature to engage in sex with a man eight years her senior, but was mature enough to take her child's life. [PIONEER PRESS](#)

- An adolescent girl is accused of committing an unthinkable crime. Should she be tried as a juvenile, a suggestion that immaturity contributed to her actions? Or should she be tried as an adult, based on the severity of the crime? Should she be charged at all? ...Among all the questions before judicial officials now is this: In five or seven years, will this girl still be a threat to society, which would warrant a long prison term? The case presents an optimal example for debate — what fits here, rehabilitation, punishment or some mixture of both, short of a long prison sentence? Let me know what you think — the replies will appear in a later column. [PIONEER PRESS](#) commentary

[Top](#)

Eagan attorney Dale Nathan, who last year ran for attorney general on a platform advocating judicial reform, argued to the Minnesota Supreme Court last week that he should be allowed to continue practicing law in the state of Minnesota.

Nathan is appealing a Nov. 22, 2002, ruling that he should be indefinitely suspended from the practice of law, with eligibility to reapply after six months. The ruling was made by Nicollet County District Court Judge Warren E. Litynski, who was acting as a referee in the disciplinary case. Litynski found that Nathan had violated disciplinary rules. [MINNESOTA LAWYER](#) (subscription required)

[Top](#)

After serving 12 years for a murder he didn't commit, Chris Ochoa has decided to take the law — make that law books — into his own hands. Ochoa — a Texas man exonerated with the help of a former law student from St. Paul and other members of the University of Wisconsin Law School's Innocence Project — is now a first-year law student at the school. "For him to finish college and then enter law school less than three years after his release from prison, to me, is just simply amazing," says Corey Tennison, now an assistant Scott County prosecutor who, along with a team of fellow students and law professors, helped uncover evidence that cleared Ochoa in a 15-year-old murder case. "He's become a friend and an inspiration."

[PIONEER PRESS](#)
[Top](#)

Coleen Rowley, the Minneapolis FBI agent who accused bureau headquarters of bungling chances to foil the Sept. 11 attacks, is criticizing the Bush administration for "whittling away our civil liberties." In an opinion piece published in today's Star Tribune, Rowley takes issue with U.S. Attorney General John Ashcroft's assertion in a Twin Cities speech last month that America "is freer today than at any time in the history of human freedom." "Well, this American disagrees!" Rowley wrote. [STAR TRIBUNE](#)

[Top](#)

- I didn't attend Attorney General John Ashcroft's speech last month in Minneapolis, but newspapers have quoted him as saying that Americans are "freer today than at any time in the history of human freedom." Well, this American disagrees! And I would venture to say that many others feel the same way -- those who have been put on the "them" side of the "us vs. them" equation in the context of the administration's "you're either with us or against us" mentality. It didn't matter whether you were a career FBI agent, a decorated war veteran, a duly elected congressman or senator, a military general or even a former president, you were labeled a traitor for voicing any criticism of administration policies. You were accused of giving aid and comfort to the enemy, called a friend of Osama bin Laden and thrown to the wolves (or more accurately, the FOXes). The intimidation in this country that's been whipped up by this official fear and warmongering has been far more effective than any Patriot Act in whittling away our civil liberties. [STAR TRIBUNE](#) commentary by Coleen Rowley

[Top](#)

Should the fast-food industry bear legal responsibility for making people fat? Most experts agree the industry's potential liability is fairly thin, even though the legal community successfully assaulted tobacco companies in the past decade on a similar addiction theory. For now, there's little rush among plaintiff's attorneys to the courthouse to file class-action lawsuits on behalf of overweight clients. But the \$115 billion to \$120 billion restaurant industry is not unmindful of what a well-executed court case could do to the business of providing one-stop shopping for deep-fried satisfaction. [STAR TRIBUNE](#)

[Top](#)

The U.S. Supreme Court said Tuesday that it will review the constitutionality of a bribery indictment against Lake Street businessman Basim Sabri. The indictment alleges that Sabri offered bribes in 2001 to Brian Herron, a Minneapolis City Council member at the time. "I can't tell you how happy I am," Sabri said of the news. The law under which Sabri was charged makes bribery a federal crime when it involves a local government that receives more than \$10,000 in federal money. U.S. District Judge Richard Kyle ruled in early 2002 that the statute is unconstitutional because it doesn't require that the federal aid be involved in the bribe. [STAR TRIBUNE](#)

[Top](#)

The ruling by a federal judge in Minnesota last week that the state cannot regulate Internet telephone calls the way it does conventional phone calls was at least a temporary victory for those who argue that the increasingly popular Internet phone services should be exempt from regulation. The judge, Michael J. Davis, is expected to issue his written opinion in the case tomorrow. That should clarify where he found that Minnesota went wrong with its attempt to apply longstanding phone company regulations to Vonage, a start-up Internet phone company. [NY TIMES](#)

[Top](#)

Securities fraud lawsuits, somewhat of an endangered species in Minnesota federal courtrooms, are staging a bit of a comeback. Since the mid-1990s, federal judges in St. Paul and Minneapolis have tended to dismiss such lawsuits routinely, so much so that some attorneys stopped filing securities cases here. But in recent months judges have switched course. Just last week, a federal judge in Minneapolis denied a motion by Xcel Energy to dismiss a shareholder lawsuit that claims the utility didn't disclose how financial woes at its NRG power-generating subsidiary could affect Xcel. Securities lawyers say a potentially big shift is taking hold that could lead to longer, more expensive litigation and force more companies to pay settlements. The trend toward quick dismissals dates to the 1995 passage of the Private Securities Litigation Reform Act. Plaintiffs have been held to high standards that require them to largely make their case at the outset — and before the discovery phase when the defense is required to turn over evidence to bolster its claims. [PIONEER PRESS](#)

[Top](#)

The state teachers union went to court Thursday to shut down an online education program popular with hundreds of home-schooling families. Education Minnesota argues that state officials erred when they certified Minnesota Virtual Academy to receive public funding because the school relies mainly on parents to deliver the instruction, but state law requires licensed teachers do the teaching. "Is it public education, or are we funding home schooling?" asked Education President Judy Schaubach. "... What we are talking about is, what is the definition of public education." State officials said Minnesota Virtual Academy meets the requirements of state law, which says a licensed teacher must "assemble and deliver" the online learning product. "We believe the school has been properly certified," said Bill Walsh, Education Department spokesman. The agency was reviewing the suit Thursday. [PIONEER PRESS](#)

[Top](#)

Two men have been charged in U.S. District Court in Minneapolis with defrauding at least two victims of thousands of dollars by soliciting money for a bogus chemical they claimed could clean damaged money. Youseph Idriss and Trokom Moore are charged with conspiring with the intent to defraud by knowingly passing altered U.S. currency. According to court papers, the men told a Twin Cities-area businessman and his associate that they had millions of dollars covered in a black substance that could be removed only with an expensive chemical. Idriss claimed to have \$1.5 million in blackened currency and asked for \$30,000 to buy the chemicals to clean it, authorities said. [STAR TRIBUNE](#)

[Top](#)