



# ATTORNEYS OF THE YEAR

## CHARLES E. LUNDBERG:

### A LAWYER'S LAWYER IN MORE WAYS THAN ONE

By Barbara L. Jones

The term “grace under pressure” could have been coined to suit Charles E. Lundberg, an attorney with a stutter who has forged an outstanding career in appellate advocacy. Lawyers and judges agree that Lundberg’s speech impediment — which he is the first to mention in a conversation — is forgettable after a few minutes of listening to the substance of what he has to say.

Lundberg, a partner in the Minneapolis firm of Bassford, Lockhart, Truesdell & Briggs, received the accolades of his peers last year when he was awarded the President’s Award from the Minnesota Defense Lawyers Association (MDLA) in recognition of his service to the profession.

Lundberg, who recently completed a five-year term as chair of the MDLA Amicus Curiae Committee, has also served on the Minnesota Lawyers Professional Responsibility Board for the past 10 years, and as the board’s chair since 1998. He handles a variety of appeals and otherwise practices mainly in the area of legal ethics and malpractice. All told, his curriculum vitae makes him a lawyer’s lawyer, in more ways than one.

#### GO-TO GUY

These days, Lundberg’s arguments generally center around defending legal malpractice cases, which is the focus of his practice. He’s a go-to guy for lawyers in trouble.

Lundberg has always found this area of the law fascinating. As a law student, he wrote “Client Fraud and the Lawyer — An Ethical Analysis” for the *Minnesota Law Review*. As a young



associate, he was asked to write an article about legal malpractice at about the same time Minnesota Lawyers Mutual Insurance Co. (MLM), which writes malpractice coverage for many lawyers, was getting off the ground and was a client of his firm.

“Fixing” potential claims is a large part of a malpractice lawyer’s practice, says Lundberg. Both the main local carriers of malpractice insurance, MLM and The Saint Paul Companies, are very committed to claim repair, says Lundberg.

“As soon as a lawyer realizes he or she may have done something wrong, the lawyer should report it immediately to the malpractice carrier, who often will be able to retain a lawyer to try to remedy the problem,” he says. “I’ve done a lot of claim repair. It’s a very interesting practice because you get to learn about a lot of different areas of law and you get to fix a problem.”

For example, Lundberg frequently

**Born:** 1951, Minneapolis

**Education:** University of Minnesota Law School, J.D., cum laude, 1978 (editor, *Minnesota Law Review*); University of Minnesota, B.A., cum laude, Phi Beta Kappa, 1975

**Bar Admission:** Minnesota, Colorado, U.S. District Court, District of Minnesota, 7th U.S. Circuit Court of Appeals and 8th U.S. Circuit Court of Appeals; United States Supreme Court

**Professional Experience:** Bassford, Lockhart, Truesdell & Briggs, P.A., 1980-present (shareholder, 1985-present); William Mitchell College of Law, adjunct professor, 1985-1989; Mullin, Weinberg & Daly, P.A., 1978-79

**Bar Activities:** Minnesota Lawyers Professional Responsibility Board (chair); Douglas K. Amdahl Inn of Court; Association of Professional Responsibility Lawyers, American Bar Association, Minnesota State Bar Association; Hennepin County Bar Association; Minnesota Defense Lawyers Association (former chair, amicus curiae committee)

**Family:** Wife, Kathy; two sons, two daughters

**Other activities:** Daily workout at the Arena Club; teaching adult classes at church; an occasional game of billiards

will come in to help bring a motion under Rule 60.02 of the Minnesota Rules of Civil Procedure, to reopen a dismissed case on the grounds of excusable neglect.

“Normally we’ll be behind the scenes so an outsider wouldn’t even know we were there,” he observes. “What otherwise would have become a malpractice case gets turned around.” Other times he will work on



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an appeal after an adverse verdict, or try to reform an instrument that has been erroneously drafted.

Of course, not all potential claims can be repaired. The legal arguments are also challenging and enjoyable for Lundberg.

“The principles of legal malpractice law are clear cut and analytical, so to a great extent it’s a summary judgment practice,” he says. “We get a lot of cases thrown out because the plaintiff cannot meet the legal requirements to bring a claim. You cannot sue if you did not have an attorney-client relationship. You normally may not proceed unless you have an expert. You cannot survive summary judgment unless you can prove up ‘but for’ causation. The courts will not allow the client to achieve through a malpractice lawsuit what couldn’t have been achieved in the commercial arena. Otherwise lawyers become insurers of their own clients and that’s not fair.”

Being sued for malpractice is, of course, a lawyer’s nightmare. Lundberg says there are many different reactions to such claims, ranging from the philosophical (a lawyer may shrug, “that’s what I have insurance for”) to the outraged. Sometimes outrage is appropriate.

“We do see from time to time a malpractice case that’s simply not a colorable claim,” he says. “It’s never fun for the lawyer, who has to spend a lot of non-billable time with me. It can be a terrible disruption of one’s practice, and it can hurt to be called unprofessional.”

But Lundberg likes having lawyers for clients. “They know you are helping them, they understand the con-

cepts and can appreciate it when you get a good result. They can tell when you are fighting the good fight on their behalf.”

Ironically, Lundberg is currently a defendant in a much-publicized lawsuit — albeit definitely *not* for attorney malpractice. He is being sued in his capacity as chair of the Lawyers Professional Responsibility Board by the Minnesota Republican Party and former judicial candidate Greg Wersal. The case involves the constitutionality of Minnesota’s ethical restrictions on candidates running for judicial office. The 8th U.S. Circuit Court of Appeals found against the plaintiffs, but the U.S. Supreme Court recently accepted review of the portion of the case pertaining to speech restrictions. Specifically, the U.S. Supreme Court is considering if the ethical rules preventing judicial candidates from stating their views on disputed legal or political issues violate the First Amendment. (See “U.S. high court to review judicial election restriction” in the Dec. 10, 2001, edition of *Minnesota Lawyer*.)

“As an appellate attorney I’ve always dreamed of appearing before the Supreme Court, but not as a litigant,” jokes Lundberg, who plans to attend the oral argument later this spring.

### THE BAD WITH THE GOOD

Another way to fight the good fight on behalf of lawyers, says Lundberg, is through his role as chair of the Lawyers Professional Responsibility Board. The board is the volunteer arm of the Minnesota Supreme Court overseeing legal ethics enforcement and works with the director and professional staff of the Office of Lawyers Professional Responsibility.

Lundberg sees the roles of the board and office as twofold: to root out the bad lawyers and to protect the good lawyers.

The director of the Office of Lawyers Professional Responsibility, Ed Cleary, characterizes Lundberg and the work of the board and office: “While our mandate has been and continues to be the protection of the public, we have shared the concern that the professional conduct of lawyers should be viewed through the real world of the practice of law. Chuck has helped maintain this focus and greatly served the profession in doing so.”

In many cases the lawyers who have committed unethical acts simply don’t know what is right and need to be reminded, says Lundberg. “Then we never see them again.”

The board doesn’t get a lot of recognition for protecting the good lawyers’ reputation, says Lundberg. “It’s equally important for the board to say clearly if a complaint doesn’t have merit — and that’s much more often than not. Most complaints end up with a determination that discipline isn’t warranted.”

That means that members of the public sometimes end up unhappy with the board, he notes.

“It’s their perception that this lawyer did something terribly bad and we’re protecting our own,” Lundberg explains. “In the first place, it’s not ‘our own’ because we have a number of lay people on the board. But some people can’t deal with the fact that they are just wrong. I’ve gotten scathing letters about what terrible people we are and that part is frustrating. Usually I will write back. It’s important to communicate to the



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public that we care about this, so I write back to explain that the matter is done and we regret they aren't happy with the result. But some people just won't let go."

The lawyers who come before the board tend to take one of two approaches, according to Lundberg. One approach is the lawyer who adamantly refuses to admit he or she did anything wrong, and is abusive or litigious about it. The other is the lawyer who owns up to the mistake and is genuinely remorseful.

"If you see someone owning up to what they did and feeling bad about it — and is sincere, which is not always the case — both the lawyers board and the Office of Professional Responsibility are happy, *happy* to work things out amicably. There will, of course, be some kind of ramification. Being remorseful doesn't give you a 'get out of jail free' card — but it will go much easier on that lawyer. It's so much more pleasant to work with that person. I think the Supreme Court feels the same way. Those cases usually are resolved by stipulation," Lundberg explains.

As most lawyers know, the most common sources of ethical complaints derive from untimely actions and failure by lawyers to communicate with their clients. The lawyers may be overworked, they may be lazy or tend to procrastinate, or they may have other life problems such as substance abuse or mental illness.

When a problem occurs, says Lundberg, the lawyer needs to be emotionally mature enough to go to the client and deal with it. Sometimes it's a simple "all I need to know I learned in kindergarten" approach, says Lundberg. "We teach our children about appropriate relational

skills; when you've wronged someone you go to them, apologize, and try to make it right."

But larger life problems are behind a goodly number of ethical missteps, says Lundberg.

"People who have life problems like that by and large aren't dealing with things rationally. They need a spouse or a partner or a good friend, someone who cares, to tell them, 'you have a problem, we need to work on it.' The best results from those situations are when the lawyer comes to the realization that there is a problem and deals with it forthrightly and then comes back and becomes a respected, reputable lawyer again. And the lawyer is much healthier too."

The American Bar Association (ABA) is in the process of adopting a new standard of ethical rules, after a lengthy investigation and hearing process by the Ethics 2000 Commission. Lundberg expects a "substantial rewrite" of the rules of professional conduct with recommendations available in late 2002 or 2003. The various states then will have to decide whether to adopt the ABA rules, which Minnesota does not always do, notes Lundberg.

"Minnesota is ahead of the curve nationally, on issues including disclosure of client fraud, sexual involvement with clients, conflicts of interests when attorneys and clients have business relationships, and imputed conflicts when attorneys make lateral employment moves," he says. "Minnesota is where the ABA is going," he explains.

### CHANGE OF VENUE

Over the past few years Lundberg also has brought a unique focus on

ethics and malpractice to the venue of continuing legal education (CLE). He describes himself as a "decidedly unorthodox" CLE presenter. Rather than lecturing, he requires the audience to participate in a law school-like Socratic dialogue, engaging them in a discussion of real-life hypotheticals that vividly illustrate potential ethical conflicts and other problem areas in the law of lawyering.

According to those who have seen these presentations, this can be an extremely effective teaching tool. Lundberg uses a humorous and gently self-deprecating speaking style, "demanding" the audience get involved, eliciting comments and ideas from the attendees, provoking them to think about how conflicts and malpractice claims arise in the real world and how practical avoidance techniques and strategies can be developed to deal with them. Later this spring, Lundberg will be taking the show on the road, speaking at an ABA national legal malpractice conference in Charleston, S.C., on "The Interplay and Tension Between Malpractice and Ethics."

Lundberg has also developed similar in-house CLE programs for some of his local client law firms. He sees a huge potential for law firms to help their lawyers satisfy their CLE ethics credit requirements in an in-house or firm retreat setting, specifically tailored to address particular conflicts and other problems that arise in that firm's own practice areas. He explains, "When you can get a roomful of partners and associates talking to each other in a rigorous way about serious ethical issues that come up



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in their daily practice, it almost always results in an invigorating and firm spirit-building experience. After all, every single lawyer in the firm has to get three ethics credits somewhere every three years. Why not do it in a creative way, with your partners, in a program closely focused on your own practice?"

### MAKING POLICY

Until recently, Lundberg wore a third hat as chair of the Minnesota Defense Lawyers Association (MDLA) Amicus Curiae committee. Like the attorney who "fixes" what could be a malpractice case, the amicus attorney also works behind the scenes. The amicus isn't concerned with the parties to the case, but tries to present "the big picture" — or at least one side of it. That's the key to a good amicus brief, says Lundberg.

Recently, the MDLA has weighed in on a number of hot topics in the profession. Among other cases, it has submitted briefs in several important Supreme Court cases:

- *Herrman v. McMenemy & Severson et al.* — A cause of action for legal malpractice accrues and the statute of limitations begins to run when the plaintiff's cause of action would survive a motion to dismiss for failure to state a claim upon which relief can be granted.

- *Witzman v. Lehrman, Lehrman & Flom* — Dismissal of fraud, racketeering and aiding and abetting tortious conduct claims based on routine professional services by an accountant.

- *Goeb v. Tharaldson* — The Frye-Mack standard for admissibility of scientific evidence, requiring novel scientific evidence to be both gener-

ally accepted and reliable, remains the standard in Minnesota.

- *Dohney v. Allstate* — An underinsured motorist (UIM) insurer may not deny UIM benefits to its insured based on the insured's failure to reach the best settlement with the tortfeasor.

"We're darn proud of Chuck," said Kathryn Davis Messerich, president of MDLA. "Chuck received the President's Award because of his long-term service to the amicus committee. He has been a constant presence on the committee and generously volunteers his time to ensure the MDLA has opportunities to be heard."

Whether arguing for a client or as an amicus, Lundberg gets a lot of joy from his work. "I like what I do, I have an enjoyable job and great partners. Frequently I'm in on the creation of what will be a rule of law. I have the honor of being able to argue one side. You always want to win, but the importance to the law transcends one case — even if the clients don't understand that. It's a chance to do something important and helpful to the profession."

### SUBSTANCE AND SPIRIT

Lundberg quickly shrugs off any suggestion that it is courageous to forge a career in appellate advocacy when his stutter sometimes makes it difficult to get the words out.

"For some reason people are always interested in how I deal with my stutter when I go into court. It's really not a big deal. Normally I will start out by mentioning it, just to break the ice, saying something such as, 'As the court may recall, I have a little trouble with my speech. I will try to speak fluently.'"

His speech is not the source of

tremendous concern, nervousness and embarrassment that it was when he started practicing.

"I've become more comfortable with it," Lundberg observes. I've also been able to apply some speech therapy tricks that I've learned, like slowing down the rate of my speech and sliding into words. Then I have more control over it. 'To-me-this-sounds-very-unnatural-to-talk-like-this,' but when I do I can control my stutter. So I will do that in arguments if I'm having a particularly hard time. If I'm really stuttering badly I will just stop, nod to the court, take a deep breath and start over."

Lundberg says his stutter was more of an issue at the start of his career.

"When I was a young associate beginning in a trial firm, the senior partners were very up-front with me about their concerns about what clients might think, Lundberg recalls. "The clients would have been insurance company claims lawyers and claims representatives, who had handled hundreds of trials. The problem was a perception of a perception — how does the insurance representative perceive how the jury would perceive me? There was some concern there; I didn't get to try a lot of cases and I still haven't, really. It's certainly true that I've tried fewer cases than other lawyers my age in this firm. But you don't get a lot of legal malpractice cases tried anyway. They either get thrown out on summary judgment or they get settled. Plus, I've branched out into appeals."

"The time limit for appellate oral argument has never been an issue," says Lundberg. "I would never even dream of asking for more time. Everyone has a short time limit and



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part of the challenge and the art of a good oral argument is putting what you have to say in a short time," he says.

"I taught legal writing for several years, and I used to tell students, 'rank what you have to say in order of importance. What are the 10 most important sentences about this case? Write those down and no matter what, say those 10 things.' That's how I try to handle it. I think, by and large, the courts respect me for the substantive stuff, which is what the courts are there for."

Judges who spoke to *Minnesota Lawyer* do respect Lundberg for the substantive stuff but they also respect his spirit.

"He's a very strong person to stand up there without apology or, I think, fear of ridicule. He doesn't give up and everybody hangs in there with

him," says U.S. District Court Judge David Doty.

Minnesota Supreme Court Associate Justice Paul Anderson agrees, saying, "It takes a lot of backbone to come to court with a stutter. I have told him, 'you have to know you are welcome in this court at any time. Your stutter in no way interferes with your advocacy.'"

Anderson recalled the first time Lundberg appeared in front of him. A very short time into the argument, says Anderson, he forgot about the stutter. "A good argument hits a rhythm and there is a very intense level of concentration. I don't know if his stutter went away only in my mind, but it wasn't a factor."

Anderson speculates that perhaps, due to his stutter, Lundberg is more thoroughly prepared for his arguments.

Minnesota Court of Appeals Judge Bruce Willis comments, "Chuck is very effective not because of how he

says something but because of what he says. He has an enormous store of credibility that is much more important than smooth delivery. He makes concessions where they need to be made and he doesn't misrepresent the record."

Doty jokes that when he is tempted to fill in a word for Lundberg, he just waits for Lundberg to come up with a word — and it's usually a better one.

In the final analysis, says Lundberg, the accolades of peers are not as important as his family. He credits his wife Kathy and their four children with helping him keep things in perspective. "In the end, no matter what you do for your clients or the profession, your family is the real barometer of your life. Without that, and some spiritual focus, the rest doesn't really matter." 