

# THE DAILY RECORD

Nebraska's Legal & Business News Since 1886

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## Justices Appear Sharply Divided Over Obama Health Care Law

By Mark Sherman

**Washington (AP)** – The U.S. Supreme Court appeared sharply divided over President Barack Obama's health care law Wednesday, aggressively questioning both sides in a case that threatens insurance coverage for millions of people.

The questions came during oral arguments in the latest challenge to Obama's attempt to bring uni-



versal health care to the United States, a central part of his legacy. Republicans claim the law infringes on individual liberties. See **HEALTH CARE LAW**, page 3

## Bill for DNA Testing After Conviction Advances in Legislature

**(AP)** – Sen. Rick Kolowski has a window on what's happening with DNA science.

His son has worked as a DNA specialist 17 years, first in New York City and now in a Washington, D.C., crime lab.

"The opportunities for catching those who do wrong, as well as freeing those who are innocent is an extremely important piece

### Nebraska Unicameral

of what we've gained and what we can prove with DNA testing," Kolowski said Tuesday during debate on a bill (LB245) that would expand post-conviction. See **UNICAMERAL**, page 2

## How Upcoming Legal Cases May Change the Future of Franchises

By Joyce M. Rosenberg

**New York (AP)** – Are franchises small, independent businesses or should they be considered part of a much larger company?

The question is at the heart of two upcoming legal cases. The outcomes could affect profits and change how franchisees hire, fire, manage and pay workers.

A federal judge held a hearing Tuesday on Seattle's minimum wage law, which treats franchisees of companies such as McDonald's and 7-Eleven as big businesses although many are owned by individuals and have a handful of employees. And March 30 brings the first of a series of hearings into complaints against



McDonald's Corp. and some of its franchisees brought by National Labor Relations Board officials. The agency's Office of General Counsel contends McDonald's is a joint employer with its franchisees, and should be held responsible if franchisees are found to have committed labor law violations.

### Small Or Large Business?

When Seattle's City Council passed a law last year raising the minimum wage to \$15 from \$9.32 an hour, it gave small businesses seven years to reach that level versus three for large businesses – with franchises considered large businesses.

The law going into effect April 1 is being challenged by franchisees and the International Franchise Association. They're asking a federal judge to stop implementation of parts of the law that treat franchises as large businesses; they contend the law discriminates against franchisees.

Franchisees are at a financial disadvantage under the law, says IFA President Steve Caldeira. For example, a restaurant franchisee will have to pay higher wages than independent restaurants for four years, he says.

See **SMALL BUSINESS**, page 3



From left, back row: Daniel M. Donnelly, Stephen P. O'Meara, Kristin A. Fearnow, Rodney C. Dahlquist, Anne M. Breikreutz and Josh W. Weir. From left, front row: Sean Conway, Joseph L. Howard, Mallory N. Hughes, Stuart J. Dornan, Christine A. Lustgarten, Thomas J. Monaghan (Of Counsel) and Jason E. Troia.

## Dornan, Lustgarten & Troia

## Having Bilingual Lawyers Enhances Practice's Ability to Serve Clients

By Lorraine Boyd  
The Daily Record

One quarter of the attorneys at Dornan, Lustgarten & Troia, PC, LLO, are bilingual, resulting in the firm providing a wide range of services to Spanish-speaking Omahans, while serving all cli-

ents in both criminal and civil cases.

They have just announced the addition of two associates, Kristin Fearnow and Daniel M. Donnelly. In addition, Sean Conway, a member of the DLT team since 2011, has become a partner.

The law firm has continued to grow since its founding partners, Stuart Dornan and Christine Lustgarten, opened the doors to Dornan and Lustgarten on January 7, 2007.

See **DORNAN, LUSTGARTEN & TROIA**, page 2

## Ex-CIA Chief May Avoid Prison for Leaking Military Secrets

By Michael Biesecker  
& Eric Tucker

**Raleigh, N.C. (AP)** – If he manages to avoid prison, former CIA director David Petraeus' guilty plea for providing reams of classified material to his mistress will result in far more lenient punishment than that often meted for leaking the nation's secrets.

Petraeus, 62, has agreed to admit guilt on a single misdemeanor count of the unauthorized removal and retention of classified material. The agreement was filed Tuesday in federal court in Charlotte, North Carolina, where Paula Broadwell, the general's biographer and former mistress, lives with her husband and children.

Prosecutors recommended two years of probation and a \$40,000 fine. However, the judge who hears the plea is not bound by that and could still impose a sentence of up to one year in prison. No immediate date was set for a court hearing for Petraeus to enter the plea.

By comparison, former CIA officer John Kiriakou pleaded guilty in 2012 to one count of intentionally disclosing the identity of a covert agent to a reporter and was sentenced to 30 months in prison. Then the CIA director, Petraeus hailed the conviction as a victory



Former CIA director David Petraeus, a retired four-star general, lied to FBI agents, divulged a massive amount of sensitive data to Paula Broadwell, his mistress and biographer. (Photo: Karen Bleier, AFP/Getty Images)

for the agency.

"Oaths do matter, and there are indeed consequences for those who believe they are above the laws that protect our fellow officers and enable American intelligence agencies to operate with the requisite degree of secrecy," Petraeus said at the time.

Prosecutors said that while Broadwell was writing her book in Washington in 2011, Petraeus gave her eight binders of classified material he had improperly kept from his time as the top military commander in Afghanistan. Days later, he took the binders back to his house.

Among the secret information contained in the "black books"

were the identities of covert operatives, the coalition war strategy and notes about Petraeus' discussions with President Barack Obama and the National Security Council, prosecutors said.

Those binders were later seized by the FBI in a search of Petraeus' Arlington, Virginia, home, where he had kept them in the unlocked drawer of a desk in a ground-floor study.

Prosecutors said that after resigning from the CIA, Petraeus signed a form falsely attesting he had no classified material. He also lied to FBI agents in denying he supplied the information to Broadwell, according to court. See **PETRAEUS**, page 3



# COMMENTARY

**Deb Fischer**

U.S. SENATOR, NEBRASKA

## Local Solutions for Education

As Nebraskans, we are fortunate to have great schools filled with wonderful teachers. We owe a debt of gratitude to our teachers and administrators, who work incredibly hard day-in and day-out to provide our children with the knowledge and tools that they need for success. But in order to succeed, we must continue to seek the highest quality.



Ensuring that Nebraska's students receive the best education possible has long been a top priority of mine. Before serving in the Nebraska Legislature, I was active on my local school board and served as a Commissioner on the Coordinating Commission for Post-Secondary Education. These positions helped shape my views on education policy as a state lawmaker and now as a U.S. Senator. Nebraska, like every state, has unique strengths and challenges specific to its schools and students – and they begin at the local level. Parents, teachers, school administrators and the local community have the primary responsibility to meet the needs of the students in their communities. That's why I firmly believe education decisions should be made back at home, not by bureaucrats in Washington.

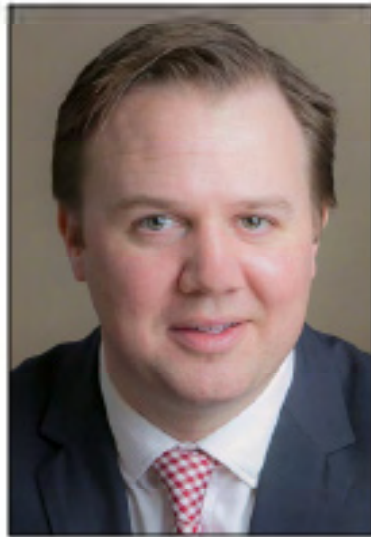
Unfortunately, there has been a steady increase of federal rules that also seek to micromanage our colleges and universities. Last year, the U.S. Department of Education released a set of proposed regulations that would affect our post-secondary schools and their teacher preparation programs. Specifically, the requirements would impose a complex wave of regulations tying federal grant money to student performance. This could negatively affect how teachers are trained and how they perform in the classroom.

During a meeting at Creighton University last month, I listened to concerns from faculty members and from staff of the Nebraska Department of Education. They informed me that this overreach could adversely impact K-12 programs. Complying with this federal red tape would also place increased strains on staff at colleges and universities. Ultimately, the new reporting requirements would result in higher tuition costs and place unnecessary strains on students and families.

These requirements would also change how teacher preparation programs are evaluated. Instead of permitting colleges or universities

See FISCHER, page 3

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Daniel M. Donnelly



Kristin A. Fearnow



Sean Conway

## Dornan, Lustgarten & Troia

(Continued from page 1)

Lustgarten met Dornan when he was the Douglas County Attorney. She was working in that office, and Dornan retained her as Deputy County Attorney in charge of the Civil Division. When he left office, she joined with him to open their law firm.

Today the firm, housed on the second floor of the historic Paxton building in downtown Omaha, boasts seven partners, five associates and a former U.S. Attorney of counsel. It plans to be there for a long time, having purchased its space there. "We don't have plans to grow the firm right now," Lustgarten said. "We'd have to purchase the rest of the floor before we did that. But then, we didn't plan our growth when we opened either."

DLT provides a full range of legal services to the Spanish-speaking community in Omaha and surrounding areas. Kristin Fearnow, new to the firm in December 2014, brings nearly ten years of experience as a bilingual attorney to the firm's immigration section.

"We are so lucky to have her," Managing Partner Christine Lustgarten said. "She brings so much experience."

Fearnow is the chair of the Iowa/Nebraska Chapter of the American Immigration Lawyers Association, serves on the board of directors of National Justice For Our Neighbors and is a member on the American Immigration Lawyers Association's commit-

tee for Violence Against Women, U and T Visas. She is a frequent speaker at the annual AILA conferences and is scheduled to testify before the Nebraska Legislature on issues impacting immigrants.

Lustgarten said that about 50 percent of their clients are Spanish-speaking.

"We used to have a satellite office in South Omaha, but we found our clients were more than willing to come to our downtown office, so we closed it."

The Mexican Consulate has retained the firm's immigration section since 2008, handling both civil and criminal cases for their constituents.

"Josh Weir is a big reason for the success of the immigration section," Lustgarten said. In 2010 he represented the appellant in a seminal case – *State v. Mena-Rivera* – that established a defendant, when entering a guilty plea, had to be instructed about the possibility of deportation or a denial of naturalization. "It was a big step," she said.

Weir and Fearnow speak at the Mexican Consulate twice a week about issues affecting immigrants, including the status of litigation. They then spend a couple of hours answering questions.

"They were speaking once a week, but when the new consul, Guadalupe Sánchez-Salazar, arrived last summer, she asked them to come twice a week," Lustgarten said.

In addition to the firm's work

with immigration, attorney Stephen O'Meara, who served as the U.S. Attorney for the Southern District of Iowa, is heavily involved in the anti-human trafficking movement in Nebraska and Iowa.

The firm's newest partner, Sean Conway, is a graduate of the University of Nebraska College of Law. He is an active criminal defense attorney, successful personal injury litigator, and also handles workers compensation claims. Conway serves on the Nebraska Accountability and Disclosure Commission, is a Nebraska Bar Foundation Fellow, sits on the UNMC Board of Counselors and is a talented addition to the annual Barristers productions, a group of young lawyers for whom he is currently serving as president.

Daniel M. Donnelly has also joined the firm as an associate, having recently moved to Nebraska from New York City. He is a graduate of the Hofstra University School of Law and served as an assistant district attorney for the Bronx County District Attorney's Office in New York City prosecuting violent crimes. Dan will assist the firm in criminal defense and civil litigation.

"We have a great group of people here," Lustgarten said. Everyone is so talented."

For more information regarding Dornan, Lustgarten & Troia, please go to the firm's website at [www.dltlawyers.com](http://www.dltlawyers.com).

## Unicameral

(Continued from page 1)

DNA testing in Nebraska.

The bill introduced by Lincoln Sen. Patty Pansing Brooks advanced Tuesday to a second round of consideration.

"This just makes good sense. We all know that in Nebraska we've had the very sad case of the Beatrice Six," she said. "And we need to be able to make sure that justice is done and that we are not keeping innocent people in prison."

In 2009, DNA testing sought by one of six people convicted in the 1985 murder of a Beatrice exonerated all six. Joseph White – the only one of the six to go to trial and who maintained his innocence even after a jury convicted him – won his plea for DNA testing, which led to an investigation that cleared him and the other five.

An amended version of Pansing Brooks' bill would clarify that DNA testing would be allowed if biological evidence was not previously tested or if more advanced technology could give more accurate results.

Under current law, the court can order a DNA test if it determines that three factors are present.

- DNA testing was effectively not available at trial.

- The biological material to be tested is still in its original condition.

- It is likely the DNA evidence would have produced a different outcome if it had been available at the original trial.

Science has outpaced the law, said Sen. Les Seiler of Hastings, chairman of the Judiciary Committee.

"And we need to catch up with science and make sure that everybody that's sitting out on South 14th Street is a guilty party, and

anybody that's innocent has the opportunity to file a motion for a new trial, present their ... evidence and see where they stand," he said.

Nebraska was one of the first states to put DNA testing into law with a bill introduced 14 years ago by Omaha Sen. Ernie Chambers. Now, a much smaller amount of biological evidence can be used to determine a person's involvement in a crime or to exonerate him or her, Chambers said.

DNA testing can not only remedy a miscarriage of justice, said Pansing Brooks, it can lead to the person who actually committed the crime.

In 325 DNA exoneration cases nationwide, the actual criminal was identified in 160. While the innocent person was in prison, those criminals committed 77 rapes, 34 murders and 33 other violent crimes, Pansing Brooks said.

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