

# P O R T R A I T S

*Photography by John Snyder*

## HEIDI K. HUBBARD

'MIATAING' FROM EAST TO WEST

Professor Heidi K. Hubbard says she has had "the best of both worlds." After a year "out West" as a J. Reuben Clark Law School visiting professor, Hubbard is now returning to practice with litigation firm Williams & Connolly in Washington, D.C.

Though here only one year, Hubbard, accustomed to the intensity of trial law, took up her responsibilities at the Law School without breaking pace. Besides teaching torts to first-year students and criminal trial practice to second- and third-year students, she also worked on the Admissions and Awards committees and served as an advisor to the trial advocacy program. In all her involvement, Hubbard found herself continually impressed by the high quality of students the Law School attracts. Though she loved teaching them, she says she would be reluctant to meet them in court.

One of Professor Hubbard's primary concerns this year was encouraging her students to look at career opportunities that, although not necessarily high paying or mainstream, might be very rewarding. She stresses that "there are so many people who need help, and there are a lot of opportunities—in whatever areas of interest the law students have—to give that help."

And she speaks from experience. Heidi Hubbard devotes much of her practice to a group that has few advocates—the criminally accused. Coming out of Stanford Law School

in 1986, Hubbard had the same concern that many law students express: How can you conscientiously defend someone who has been accused of a crime? Since then she has discovered that it is the criminally accused "perhaps more than anybody else in the legal system" that need an advocate, and a substantial portion of her litigation work is now devoted to white-collar criminal defense.

Heidi says she started to care about helping the criminally accused when she began to see how criminal prosecution isolates individuals. They are perhaps the only people without an advocate—"there's nobody lobbying Congress on their behalf; there's nobody saying nice things about them in the newspaper; there's nobody on their side. Even if they are acquitted, or if charges are dropped, they may go through months or even years of reports in the newspaper about the accusations. They may lose their jobs. People may refuse to associate with them. Their lives may be changed forever."

Continuing her efforts, Heidi is currently researching Fifth Amendment rights against self-incrimination during sentencing. Under the new federal sentencing guidelines, a criminal defendant who has been found guilty of a crime can choose to receive a more lenient sentence by "accepting responsibility." "Accepting responsibility" is an umbrella phrase that often involves admission of guilt. Hubbard is concerned that this could hurt appeals the defendant might have pending or give rise to prosecution for other crimes. "There is a lot at stake for the criminal defendant. When you are representing somebody who knows that his liberty is at stake, there is an urgency about the case that just does not let you do anything but give it all you have."

For Hubbard, going to court is exhilarating. Her only frustration teaching students criminal trial practice was that it made her want to be in court again, examining witnesses and giving opening statements. "There is a 'high' that comes from being in court that I have not found duplicated in any other area of my life." However, Heidi is quick to add that it is not nearly as glamorous as shows like "L.A. Law." "If you are going to give a great opening statement, you will probably spend the whole night thinking, working, and worrying. So you will not feel very glamorous the next morning."

Heidi's peers might think she's a workaholic. She can often be found in her office late at night. While in Washington, D.C., she also served as Relief Society president. A colleague there points out that it is a mark of her kind and compassionate nature that, with as little free time as she has, she gives much of it away to people in her congregation.

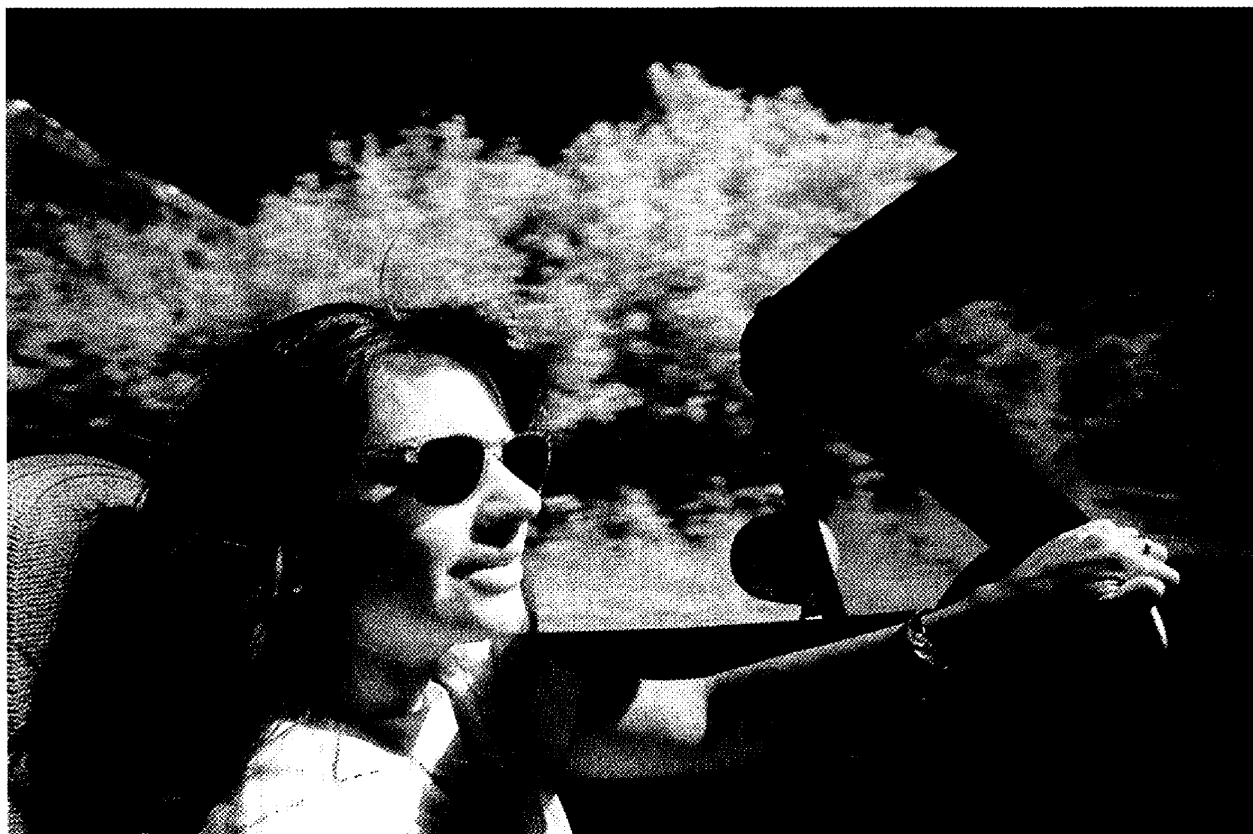
Although she works hard, Professor Hubbard also has a fun-loving side. In her few moments of rest and relaxation she might

be found "Miataing"—putting the top down on her little red Mazda Miata for a sunny drive. A self-declared opera fanatic, she enjoys doing theater and opera weekends—two plays and an opera in the course of two days. She also loves the outdoors and has relished Utah's beauty this last year while hiking, running, and skiing.

Professor Hubbard says it was a difficult decision to go back to practice after teaching. In her practice she deals with sophisticated tort litigation like securities fraud or medical malpractice and found getting back to basics and the fundamentals of the law refreshing. She has also enjoyed the chance to research any areas that interest her—an opportunity the demands of practice seldom allow.

Heidi has had a wonderful year in the classroom. For her, there is a real excitement that comes from teaching—different from that of going to court. Though she wants to teach again in the future, for now she feels a pull toward the fast-paced litigation lifestyle, "which probably means I need psychiatric treatment," she laughs.

*Heidi K. Hubbard  
"Miataing" in her  
Mazda Miata*



## LYNN D. WARDLE

## CONSCIENCE CALLS

In a way, Professor Lynn D. Wardle is like many other legal professionals, delicately trying to balance the scales of justice and mercy with decisions that are both legally sophisticated and humane. On the other hand, Lynn faces the even tougher challenge of a predisposition for legal "hot spots," including fami-

and the law, one group whose legal rights are often ignored. The seminar will focus on the sophisticated legal issues that factor into cases involving children, but will also discuss the fairness of certain laws and changes Professor Wardle feels must be made. Many of these changes stem from a paper he presented in 1991 at the Sixth World Conference of the International Society on Family Law (ISFL), entitled "The Evolving Rights and Duties of Stepparents: Making New Rules for New Families," published this summer in *Parenthood in Modern Society*.



*Lynn D. Wardle with his wife, Marian, and sons David and Jonathan*

ly law, biomedical ethics in law, and abortion law. How does Professor Wardle manage to walk the fine line between sophistication and sensitivity? For starters, he makes his best law-trained decision. Then he leaves the rest up to his conscience.

For example, this year Professor Wardle will teach an advanced seminar on children

The article centers on the recent explosion in the number of stepfamilies in the United States. According to Professor Wardle, sometime this decade stepfamilies will become the primary American family form, since the number of non-first-time marriages in the U.S. is steadily rising. Lynn argues that this rise demands some changes in family law

since currently the law treats stepparents and biological parents very differently. For instance, if a second wife raises the children of her husband's first marriage, even after 15 years if her husband dies or they divorce she cannot gain custody of them in some states. "The presumption," says Professor Wardle, "is that she is a stranger to the relationship, though for 15 years she's been there." Stepparents are also treated differently than biological parents. For example, a stepfather's duty to support his wife's children ends with his divorce from their mother.

Professor Wardle stays involved with the practical dimensions of family law through his pro bono work, representing or consulting in dozens of divorce, custody, paternity, child support, and adoption cases free of charge, or supervising student work in the same areas.

In addition, Professor Wardle is a member of the American Law Institute consultative group drafting proposed guidelines on how American family law should develop. To his and others' frustration, Professor Wardle reports the group's work has been detrimentally influenced by gay-rights activists and others with narrow or partisan political agendas. Among the suggestions the group has encountered are motions for homosexual partners of parents (but not heterosexual partners, stepparents, grandparents, or foster parents) to also be considered "parents." Others have lobbied for spouses to receive up to half of their partner's future income in the event of a divorce, regardless of their need, sacrifice, or contribution.

Biomedical ethics in law is another sensitive but pressing issue for Professor Wardle. In June he had an article published in the *Journal of Legal Medicine* reviewing all American conscience clause statutes. These laws protect the right of health-care providers to refuse to participate in medical procedures to which they have a moral or religious objection. The debate over conscience clauses began after *Roe vs. Wade* held that all states had to allow abortion on demand. Since then, 44 states have passed conscience clauses.

While conscience clauses seem like a great idea, Professor Wardle finds that most of the statutes are poorly drafted and provide little protection. For example, most conscience clauses identify only one procedure (usually abortion), saying that the health-care provider has the right to refuse to perform that operation, but none other. The statutes don't apply to other controversial procedures such as

euthanasia, removal of feeding tubes, sterilization, or dispensing "morning after" pills—which, according to the particular judge's point of view, may or may not be abortion. Similarly, most conscience clauses protect only a limited class of health-care providers, often omitting some of the most vulnerable personnel like medical students and providing even less protection for institutions. Lynn's article reviews conscience clause statutes and case law and makes recommendations for positive change, claiming that the time for revision is now. "The Clinton administration is trying to substantially increase federal involvement in health care. When conscience clauses are already so inadequate, a new program could lead to greater pressures for coercion, discrimination, firing, threatening, and harassment. Something needs to be done."

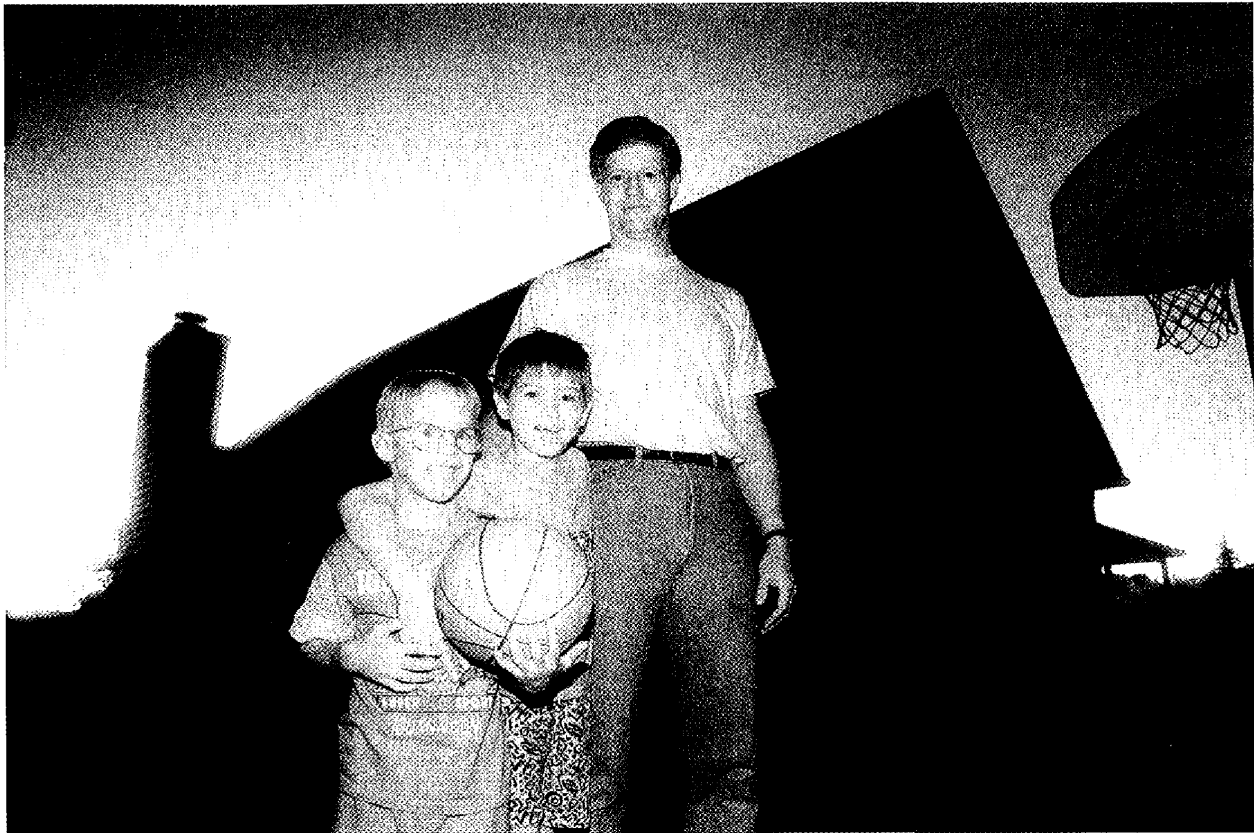
Probably the most controversial topic in Professor Wardle's work is abortion. As a member of the Americans United for Life Board of Directors, Lynn provides pro bono advice to abortion-case lawyers and discusses abortion-law policy questions. Recently he informally counseled Utah State lawyers about the 24-hour waiting period of the informed consent law that pro-choice organizations and abortion clinics have challenged. Lynn feels the concerns about the new law are mostly mercenary. "When a similar law was passed in Mississippi, the number of abortions dropped by 50 percent. That cuts into business."

Besides doing extensive pro bono work in abortion law and family law, Professor Wardle finds time to serve many others. In his ward he works with the Young Men and Scouts. Last summer he taught a basic jurisdiction class for the CLEO program at the University of Wyoming. The program helps students whose predictors of law school success are not very high but who are attractive for some other reason. Typically, says Wardle, these students "have something in their background that makes them appealing but don't have the grades or LSAT scores that the other applicants have. For instance, the student's parents may have immigrated from Siberia when he was 14. Or the student might have been a single mother at age 16, raised a family, been a great community leader, and now want to go to law school. Or she might be a black student who wants to come to BYU, where there aren't many blacks. These are people you want to provide opportunities for." Besides helping students, Lynn's experience last summer apparently helped him sharpen his teaching

skills: last year he was voted Professor of the Year by the Law School's Minority Law Students Association

Professor Wardle's favorite teaching experience, however, in past years has been his seminar on the origins of the Constitution "I think it's the most exhilarating course I teach at the Law School," says Lynn "The students get into some of the most enriching literature

and an art history instructor at BYU, have two sons who are "growing up too quickly" The oldest will be a BYU freshman this fall Lynn enjoys being physically active, participating in jogging, racquetball, tennis, baseball, or golf at least three or four times a week to help him "sweat off the frustrations of [his] job" A modest confession from one who bears a burden of conscience calls



*Kevin J. Worthen and sons Collin and Aaron*

in law and gain great enthusiasm for the subject It's fun to see students ignite and come to life, especially after they've gotten a little bit worn out and cynical in a couple of years of law school It gives them hope, because when they read in the newspapers and casebooks about how everything goes wrong with the law, how it can be misused, they need to see that there are people who faced enormous odds and tremendous obstacles but overcame them to do something magnificent "

Lynn and Marian, Lynn's wife of 20 years

#### KEVIN J. WORTHEN

##### ONE OF THE GANG

Echoing Aristotle, Professor Kevin J. Worthen believes that "man is by nature a political animal," instinctively wanting to belong to a group Professor Worthen claims no exception to this human tendency For him, "being with the gang" means a range of

activities, from attending a University Faculty Athletics Committee meeting, to teaching a class on Indian law, to playing a pickup game with his six-year-old basketball enthusiast son. He has a knack for making others feel like part of the group, too, using his enthusiasm and people skills to foster a variety of projects.

Kevin's recent writings confront problems groups face today. "In America we've come to rely to a great extent on individual rights," he says, "thinking that society ought to be organized so individuals have maximum freedom. I think we've overlooked that individuals really need groups to teach them the way to use freedom—to teach that if you have freedom you must be responsible for it and use it in a certain way. In order to be effective in teaching these things, groups have to have protection from outside interference." Professor Worthen continues, "But as a society we are either ignoring or attacking them. Sooner or later group disintegration will cause individual freedom not to work either, because individual freedom requires inner restraint."

Many oppose more group power out of fear of abusive groups like the Nazis and the Ku Klux Klan. While Kevin agrees that abuse of power needs to be controlled, some groups legitimately need more governing authority to accomplish their useful purposes. He cites the example of an inner-city school that may want to segregate boys and girls to provide a better environment for teaching children without much home structure about what it means to belong to a positive association.

Small cities, which account for 75 percent of cities within the United States, also act as value-teaching groups and require more freedom to govern than do larger communities with more diverse populations, claims Professor Worthen. He explains, "People move into areas where they have similar values. Even in cities like New York, Chicago, and San Francisco, there are suburbs with particular characteristics. To allow a suburb to say it's not going to have X-rated movie theatres doesn't bother me much, because it can decide that's the kind of community it's going to be in order to teach values." Indian tribes, which act as small communities, are in even more need of group rights, claims Kevin. "We want Native Americans to be part of mainstream society and have individual rights, so we say 'let's break up the tribe.' In reality, though, it's the tribe that gives meaning to what it is to be Native American.

Without a cohesive tribe, being a 'Navajo' or 'Hopi' or 'Cherokee' doesn't mean much."

Professor Worthen proposes that the law allow some groups more governing authority after evaluating the different capabilities of and dangers posed by each particular group, instead of ruling on each case with the same hard-and-fast rule. Kevin's recent *North Carolina Law Review* article, "One Small Step for Courts, One Giant Leap for Group Rights: Accommodating the Associational Role of 'Intimate' Government Entities," shows how such a functional approach is consistent with existing constitutional law and illustrates how it could be used to enable inner-city school districts and rural Indian tribes to better solve their problems.

Research is not the only area where Professor Worthen works in behalf of groups, however; he's also quite at home with students. His contagious enthusiasm makes him the natural choice for judicial clerkship coordinator, where he generates enthusiasm for clerkships and helps students through the application processes. "You're going to be a fisher all your life," he tells them. "Here's your chance to see what the fish like." Professor Worthen explains, "Lawyers are going to be appearing before judges all their lives. When they clerk for a year they take part in an invaluable mentoring process. Judges will say, 'that argument was really good and here's why,' or, 'that attorney was really bad and here's why.' Students can't get that kind of insight anywhere else."

In the future Professor Worthen wants to become more involved with another group: Latin Americans. His future plans include taking a sabbatical to a South American university sometime in the next few years and taking a more active role in the Law School's Volunteer Immigration Program. As one of only two Spanish-speaking faculty members, Kevin feels a desire to represent Latin rights more effectively.

When not promoting other group causes, Kevin enjoys spending time with his wife, Peggy, and their own small gang, children Collin (eight), Aaron (six), and Kaylee (one). Probably Kevin's most demanding affiliation, this band frequently requires him to jockey his time between basketball, yardwork, soccer practice, family fishing, piano lessons, and "who knows what else?" And though Kevin seems to enjoy his long list of associations, it's little wonder that flexibility, he claims, is the nice thing about his job.