

# Privacy Watch

Mansfield Tanick & Cohen P.A.  
Attorneys at Law

## Chief Justice's Departure Recalls Key Privacy Case *Landmark Ruling Hailed as Kathleen Blatz Steps Down*

By Marshall H. Tanick

The recent retirement of Kathleen Blatz from the Minnesota Supreme Court earlier this winter recalled one of her most significant rulings on the bench. In 1998, she authored a landmark ruling that established the right of privacy in Minnesota.



**Marshall H. Tanick**

For many years, the Minnesota courts had rejected claims of invasion of privacy. But, in the summer of 1998, the Court reversed direction and, in *Lake v. Wal Mart Stores, Inc.*, 582 N.W.2d 231 (Minn. 1998),

Minnesota joined nearly all of the other states in recognizing a right of individuals against invasion of privacy.

The decision was not a unanimous one. Authored by Chief Justice Blatz, and joined by four other justices, the court upheld an invasion of privacy claim by a pair of women against a Wal Mart Store in Dilworth in northwestern Minnesota. The case arose when the women brought film to a Wal Mart store for processing. The film contained pictures showing them cavorting in the nude while on a Mexican vacation. A store

employee apparently distributed the photos around town, which precipitated a lawsuit by the women for invasion of privacy.

Both the Clay County District Court in Moorhead and the Minnesota Court of Appeals rejected the claim, noting a long line of Minnesota case law that rejected common law invasion of privacy claims. But, in her opinion, Chief Justice Blatz deemed the right to be free from intrusive invasion of privacy to be an "inherent right" of all Minnesotans. As she wrote: "The heart of our liberty is choosing which parts of our lives shall become public and which parts we shall hold close."

### Multiple Matters

The *Lake* ruling recognized multiple forms of invasion of privacy. The three matters that can constitute an invasion of privacy, accord-

ing to the *Lake* opinion, were as follows:

A physical invasion, such as a trespass, the misappropriation of a person's identity for commercial purposes, and the publication of truthful or embarrassing facts, which constituted the wrongdoing in the *Lake* case. The Court rejected a fourth type of privacy, "false light," which consists of publishing information comparable to defamation by harming the reputation of the communication.

But a pair of justices dissented from the ruling. They viewed the multiple forms of privacy to be an unnecessary expansion of Minnesota law, inconsistent with prior precedent.

### Landmark Law

Chief Justice Blatz, formerly a state legislator, prosecutor, and Hennepin County District Court Judge, served on the Supreme Court for 11 years. During the final seven years of tenure, culminating in her retirement in January, she was Chief Justice of the Court, the first woman to serve in that role. She was replaced by Russell Anderson, who was elevated from his position as justice of the court to the position of Chief Justice. Justice Anderson's position was taken by Lorie Gildea, who was elevated by Governor Pawlenty from a position as a Hennepin County District Court Judge.

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The ruling in the *Lake* case constituted a landmark in Minnesota case law. As a result of the ruling, Minnesota joined all other states in the Union, with the exception of North Dakota and Wyoming, in recognizing the common law right of privacy.

The case was sent back for trial. Ironically, the women lost the case before a jury, which ruled that the Wal Mart was not liable for invasion of privacy because the employee's action was not authorized.

Nevertheless, the *Lake* case established an important new right for Minnesotans against invasion of privacy. Other issues are notable. But her decision in the *Lake* case, establishing the right of privacy in Minnesota, may be one of her long lasting legacies.

#### PRIVACY WATCH FACT

*Why Minnesota now recognizes the right of privacy.*

"The right to privacy is an integral part of our humanity; one has a public persona, exposed and active, and a private persona, guarded and preserved."

*Lake v. Wal Mart Stores, Inc.*, 582 N.W. 2d 231 (Minn. 1998).

## Law Firm Participates in Blatz Retirement Dinner

The law firm of **MANSFIELD, TANICK & COHEN, P.A.**, participated in the retirement dinner of CHIEF JUSTICE KATHLEEN BLATZ of the Minnesota Supreme Court earlier this winter. The program, sponsored by the Minnesota State Bar Association, honored the retiring Chief Justice, attracted about 775 people at The Depot in downtown Minneapolis.

"Everyone in the legal profession appreciates the fine performance and professionalism of the Chief Justice and wishes her well in the future," said Mr. Cohen on behalf of the firm. About \$100 raised from the dinner went to two of



Helping to laud the departing Chief Justice at the program were, back row, from left to right: Attorney Lamari Santana, Managing Partner, Earl Cohen, Attorney Steve Parsons, Attorney Andrew Luger, of the law firm of Green & Espel, a leading candidate for Hennepin County Attorney, and Attorney Laurie Mack, along with, front row, left to right: Phyllis Cohen, wife of Mr. Cohen, attorneys Shawn Pearson and Charles Horowitz, Attorney Cathy Gorlin, of the law firm of Best & Flanagan, and her husband, Marshall H. Tanick, of **MANSFIELD, TANICK & COHEN, P.A.**

the Chief Justice's favorite charitable causes benefiting children: The Forgotten Children's Fund and The Friends of Children Foundation.

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Mansfield Tanick & Cohen P.A.  
1700 U.S. Bank Plaza South  
220 South Sixth Street  
Minneapolis, Minnesota 55402-4511