

March / April 2020 Volume 89 Issue 2

Official Publication of the Hennepin County Bar Association

HENNEPIN LAWYER

Focus on

Gender and the Law



+ A Discussion with

HCBA Women Past Presidents



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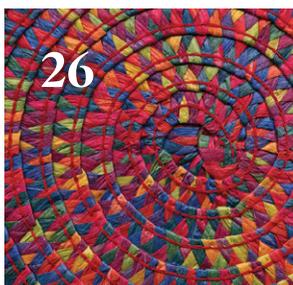
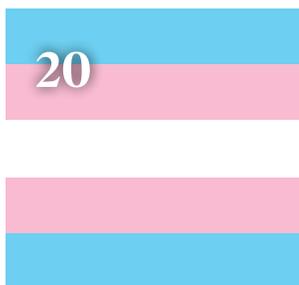
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The Full Humanity of People

In 1972, Ruth Bader Ginsburg co-founded the Women’s Rights Project at the American Civil Liberties Union. Using primarily male plaintiffs as a legal strategy, Ginsburg helped women gain *de jure* equality under the law, garnering constitutional protections based on gender. Later, Kimberle Crenshaw coined the term “intersectionality,” developing a more nuanced lens to feminist legal theory by positing that people’s identities are multifaceted and must be taken as a whole. Specifically, she described that a black woman, for example, cannot just be “black” or “woman” separately—the unique overlap of her experience in race and gender creates specific challenges and considerations for her that black men and white women may not face. This can be extrapolated to the concepts of ability, class, sexual orientation, religion, naturalization status, and more.

Seeing the whole of a person and treating them equally under the law is an age-old riddle. How can the law apply with *equity* to protect the oppressed and disenfranchised, hold wrongdoers accountable, and advance justice? I would posit that this challenge starts with each of us lawyers, whether we work as practitioners, academics, judges, or lawmakers. Our challenge is to see the full humanity of people and factor that into how we bring, judge, or defend their cases.

Ginsburg’s strategy was an initial battering ram for gender equity, but as we navigate the 21st century, the landscape requires flexible, holistic understandings of systems and people in order to foster justice and best uphold the Constitution as we have all sworn to do. Intertwined understandings of sociological, legal, and economic forces upon race, gender, and class, are necessary to be competent practitioners, judges, academics, and lawmakers in the new millennium.

In 2020, the word “gender” has taken on nuance and meaning that our society has rarely assigned to it. Ten years ago, most people would tell you that the words “gender” and “sex” were interchangeable, and that gender is binary. In 2020, those assumptions have been challenged. Increasingly, gender is not synonymous with sex, and it is not binary. How the law interacts with gender, therefore, must change.

In January’s issue of the *Hennepin Lawyer*, I co-wrote an article about how legal language and social norms are a co-evolutionary pair, each feeding and further entrenching the other. This manifests in our systems with regards to race, class, ability, religion, sexual orientation, and, of course, gender. In our current issue, you will read about how these schemas and the expectations they place on our perception of gender manifest—and how you can challenge them.

Ellie Krug writes about her experiences as a transgender woman, who transitioned after a long and illustrious legal career. CB Baga and Nicole Hittner each write about how you can be a more thoughtful attorney, with Baga explaining how to cater to non-binary clients and Hittner discussing allyship with women in your workplace. Carolyn Grose writes about how lawyers should use critical theory and justice-centered practice to create normative narratives for our clients. This type of critical thinking allows lawyers to decipher their cases through the lenses of the law, their clients, and the entrenched systems that affect both.

In this issue, you will also find excerpts from a roundtable discussion that our Publications Committee vice chair, Lisa Buck, and I moderated between several past HCBA presidents. These leaders discussed myriad issues, from when they first realized they wanted to be lawyers to the difficulties they faced as young women in the

legal field. In having this discussion, it was clear to me that women in the law are blazing trails for everyone, regardless of gender. In discussing work-life balance, for example, several women touted the importance of supportive partners, men taking parental leave to normalize parenting in the workplace, and the positive effect that technology has had on the practice of law.

In this issue, we attempt to provide glances into various ways gender intersects with the law, highlighting female and nonbinary clients and lawyers. This is, however, just the tip of the iceberg. Gender, like race and class, is entrenched in our understanding of society and our roles in it, permeating every aspect of our lives. The aim of the articles in these pages is to provide macro-level insights, practical tips for your practice, and a keener understanding of how who we are affects how we are seen, treated, and impacted by the law.



**Ayah
Helmy**

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Ms. Helmy is an assistant Ramsey County attorney, advising county agencies and litigating on their behalf. Previously, she clerked in Hennepin County District Court, ran a solo practice, and worked for Washington, D.C., local government. Ms. Helmy is also an adjunct professor at Mitchell Hamline School of Law, teaching Feminist Jurisprudence.

Attorney Wellness



The American Bar Association recently conducted a study which concluded that “too many lawyers and law students experience chronic stress and high rates of depression and substance use.” This conclusion raises serious issues for the profession and lawyer competence. Last year, the Minnesota Supreme Court issued a clarion call to our legal community, asking it to take a serious look into lawyer wellness issues and begin the process of addressing the growing crisis.

Last year, the HCBA formed a task force to actively engage in attorney wellness issues. The task force, led by Michael Boulette, was charged with making recommendations for how the HCBA can best promote and support attorney well-being through existing programs or through the creation of new programs, either alone, or in partnership with other organizations.

After a year of engagement, the task force has issued its report to the HCBA Board of Directors. The board will now begin the work of determining how to implement the recommendations made in the report.

HCBA Attorney Wellness Task Force Recommendations

1. Ensure that the HCBA's commitment to wellness is reflected in its leadership at all levels (officer, board, and staff).
2. Continue to prioritize opportunities for members to build relationships, reduce isolation, and increase engagement in the profession.
3. Prioritize the HCBA's current relationship with Lawyers Concerned for Lawyers (LCL) and increase collaboration with the MSBA Well-Being Committee.
4. Ensure LCL's services are regularly publicized at HCBA events and in communications.
5. Encourage HCBA sections to prioritize wellness in their programming.
6. Incorporate wellness and well-being into the HCBA's existing programming.
7. Commit to regular, sustainable, association-wide well-being programming.
8. Deliberately include wellness topics in HCBA's existing communications.
9. Commit to a campaign to raise awareness and reduce stigma.
10. Compile well-being resources for members and offer those resources in a variety of forms.
11. Collaborate with other stakeholders for systemic change and improvement.
12. Continually evaluate the HCBA's current commitment to wellness and well-being against best practices.

Clearly, the recommendations require a new role for the organization in working with our members to enhance the health of our legal community. We are being challenged to infuse wellness into the basic infrastructure of the HCBA. I am confident that our governing body can take concrete steps to address this challenge.

Professional organizations exist for the benefit of their constituents. There are times when issues confront a community like ours that require an awakening or a new mindset. I am confident that our board and staff will rise to the occasion and provide leadership to help our legal community in Hennepin County exist in a healthier environment. In addition, we will be there for our members in need of help. I ask everyone to join our effort to raise awareness of this issue and help us address it.



**Jeff
Bail**

2019-2020
HCBA President

jbail@yostbail.com

Mr. Bail is the managing partner in the Minneapolis office of Yost & Bail where he practices in the area of Insurance Subrogation. He is the founder and past President of the National Association of Subrogation Professionals.



Roundtable Participants

- Marlene Garvis
- Kim Lowe
- Sonia Miller-Van Oort
- Adine S. Momoh
- Sheryl Ramstad
- Hon. Mary Vasaly
- Courtney Ward-Reichard

Remote Participants

- Jewelie Grape
- Trudy Halla
- Jean Holloway

Moderators

- (Pictured Below)*
- Lisa Buck
 - Ayah Helmy

Gender and the Law Roundtable

A Discussion with HCBA Women Past Presidents

The circle of women seated at the roundtable was diverse: law firm partners, in-house counsel, business advisors, a judge; black, white, Latina; single and married; millennial to baby boomer. Their paths to the law were just as varied. One woman knew she wanted to be a lawyer when she was six years old. Another was intrigued by the law after working as a paralegal. One woman left a successful career in nursing to go to law school. Their paths differ, but they share a common bond: each served as president of the HCBA during her career. As women and leaders in our profession, their voices are vital to issues of gender. *Hennepin Lawyer* staff invited these attorneys to a roundtable discussion. Excerpts from the discussion follow. *Responses have been edited for clarity.*



GETTING INTO THE LAW

Sonia Miller Van-Oort ▶

I would say I was a little bit naïve and I think I went into my first year of practice thinking that working hard and doing good work was enough. And I learned in the first couple years that no, there's actually more to this than that. It's not necessarily explained to you at first and I think a lot of times people don't end up getting it at all, but I did get it then and understood that there are politics, there are relationships, and even having a mentor isn't enough necessarily in a big law firm to advance and get the opportunities that you want.

Sheryl Ramstad ▶

I remember people being very supportive of me as a young lawyer. I started as a public defender about the time Diana Murphy first went on the municipal court and I watched her go from there to the federal court. By the time I was in the U.S. Attorney's Office, she was a federal judge. I also remember Helen Kelly, who preceded me as president of the Hennepin County Bar, Minnesota Women Lawyers (MWL), and the Minnesota State Bar. I remember Rosalie Wahl, I remember when she was first appointed, I remember Rudy Perpich's term—he started appointing a number of women. There was sort of a breakthrough then where you didn't feel like you were alone.

Trudy Halla

I have always felt very, very lucky. I have always been mentored and treated with respect. When I was a paralegal, I was obviously the only woman in meetings and young, and somebody would ask me to go get a cup of coffee or make a copy and the partner I worked for would say, "No, Trudy needs to stay here. I'll get my secretary to do that for you."



"I mean, my law school class, we had just a handful of women and one of the professor's had "Ladies' Day" which was the only time that he'd call on women."

– Sheryl Ramstad

◀ Adine S. Momoh

Being a first-generation American, and my immediate family not having been lawyers, I largely learned what the practice of law would be like when I was a summer associate as a 1L and a 2L.... One of the things that I didn't realize going into the practice was how important it would be to have an outside network of mentors, sponsors, and champions. You don't think you would need that when you are in law school. For example, in law school, you don't think you need to be involved in the legal and broader community at the beginning of your practice. But I was fortunate enough to have met many colleagues both within and outside the firm earlier on in my career who wisely taught me otherwise. That is what has worked for me and what has helped me, among other things

◀ Kim Lowe

I was raised with a working mother who had kind of gone through a lot of this. She was a career executive my entire life, and went to work when I was six months old. I was probably more prepared and really knew hitting the ground running what I wanted to do. I wasn't shocked about business development, and I wasn't shocked about relationship-building. It was pretty easy for me, generally.

CHALLENGES IN PRACTICE

Marlene Garvis ▶

I didn't always recognize who my real mentors were for a long time. So that was difficult. But I had to learn to speak for myself, reach out into the community, so I became very active in MWL. I then became active in HCBA. On my own, I did these things because I thought they were really important and one of the things that I realized is that practicing law then was the goal and the end....But the mentoring that you have now, the support that's out there now was not there when I came out of law school in 1984. But we made it.

"Once you get to a certain age, and the clients hire you, you control your own destiny. I'm at a place in my career where people seek me out. That's just a branding and a power you start to get as you get older."

— *Kim Lowe*



▲ Courtney Ward-Reichard

Early in my career I was involved in some litigation where our firm was basically the only Minnesota firm and there were a bunch of the biggest New York firms. And I'd go to meetings—we used to actually meet face-to-face back in those days....I'd be in the conference room with 50 chairs around a giant table and I'd realize, there's like two women in this room. And I worked with a lot of women on these other teams representing other defendants in this litigation, but they didn't get to come to the table.

Adine S. Momoh

I have had to work harder than my peers and have had to be determined and resilient to have the practice I have today and to have served as lead counsel and first chair on numerous cases. If it's a man who happens to be white, he may not have to work as hard to be put on cases. A lot of times, the conversations of who will be on a case, who will lead it, or who will serve as first chair at trial might happen outside your presence or without you even knowing and being able to advocate for yourself. That is where having a supportive network comes into play. It is important to have those supportive colleagues, again both inside and outside the firm, who can advocate for you and speak on your behalf when you can't.

◀ Hon. Mary Vasaly

What I was hoping to do with my year [as HCBA president] was to encourage lawyers to participate in the bar association because I felt it was of such importance to the profession. When I started practicing law, lawyers' attitudes about the practice of law were different than they are now. At the time, that smaller community of lawyers thought of themselves as members of a "profession" whose main objectives were to deliver outstanding work on behalf of clients, and also to provide service and leadership to the community. It was in the latter 1980s that things changed and we started talking about marketing, the "bottom line," and how a law firm was foremost a business. When this change began, there was concern that the focus on the bottom line meant that service to the community, mentoring, and pro bono work would suffer. Similarly, with the competition for business, we thought professionalism and collegiality might be impaired. And that was true to some extent. It was also true that we lawyers became more isolated at a time when it became more important than ever that we work together to solve problems.

Sonia Miller-Van Oort

I don't think it's a predominant thing, but from time to time there is a difference in opposing counsel in what they try to do and how they interact, but again is it because I'm a woman, or is that the practice? I'm not someone who's quick to go to "it's a woman thing" but I do feel like there are times when I have experienced that.

WORK-LIFE BALANCE

Courtney Ward-Reichard

I've used technology to try to bridge that gap... I would rather be at my child's swim practice with my laptop than not at swim practice. For me, being able to take that technology and say I'm going to be present, I'm going to do things with the kids, I'm going to drive them where they need to be driven. I've always got the phone. All the things that allow us to work from anywhere, I really take advantage of that... I am always there when my kids need me, but there are times where I also have to say I do not have the bandwidth to figure this out for you. You have to figure it out. And I think ultimately that serves them pretty well.

Sheryl Ramstad

Now that I've got children who are raising their children, it's one of the regrets I have that there were so few choices in our era for being able to do both a professional career and parenting. I remember vividly going to school outings where I'd be the chaperone, but I'd be sitting there with a file on my lap on a hayride. At that time it wasn't possible to leave and then come back. I'd been so driven to get into practice that I didn't want to sacrifice that.

Marlene Garvis

In terms of work-life balance, my mother died when I was eight, so my biggest thing when I had my kids was that I would be there. So I felt, even going to law school, that I was there. I would work early in the morning before they got up, or late at night. I was always active in the community and had leadership positions in the community organizations before I went to law school. It wasn't unusual for me to have some evenings I spent away. I felt that I was trying to be a role model for them. I tried to be at all their activities, and they had a lot of them.

Hon. Mary Vasaly

I wanted so much to be successful at what I was doing. I didn't know whether I'd be able to go part time or leave for a time. I'm really glad that women since that time tried that, have done that, and made inroads.

Adine S. Momoh

You have to set the expectations, whether it's the client, the internal client, or the colleague that you're working with. You have to be mindful when are you responding to the email, *is this really an emergency?*

Kim Lowe

In my first 10 years of practice, I didn't take a vacation because I worked 2,000 hours a year. I was in a large firm and that's what we all did in corporate work. It's a little different now, because to whom you are accountable is different when you own your own firm and you're answerable to your clients. They don't care because they're juggling the same thing.

Marlene Garvis

That's when you talk about well-being [and] taking care of yourself, when you have to say I don't have to answer this now. I can answer this six hours from now. And I've started to do that over the weekend. "Call me on Monday. Don't call on my Saturday." But it's really hard to do because you're right, you're the person that they're contacting.

Sonia Miller-Van Oort

I sometimes talk about if you don't like the rules, change them, so I've changed them. Changing how you operate a law firm and what those expectations are and what the metrics are so that you have the benefit of really smart women who only want to work part-time. Or you want to have the flexibility for your male attorneys—any parent attorneys, [or] attorneys who are caring for their parents. I think I helped create that in a firm, so I guess that's kind of my contribution, but when you're running a firm and you're the chief manager you don't always get the benefit of it yourself. But I at least feel like I've helped the situation, perhaps for others.

Kim Lowe

I think everybody is getting overwhelmed with technology, though. This is not gender-specific, it's not a [particular] generation. I think all of us are constantly available. It's everywhere and it's not getting better. You just have to pick that battle, I think, and figure out how you want to do it. I think the economics of law has really changed too. I think the real answer on how much money lawyers are going to make, the business of law, how that is, that's changing and it's not unchanged since the Great Recession and I think there's a real eye opener on how much lawyers are really going to continue to make.

Courtney Ward-Reichard

I mean there are ways that firms are really realizing—at least my firm realizes—that it's important to keep people that are talented.

"My kids know, Mom's going to be at our things, but she's going to have her work bag with her. So, the technology helps you to do it, which is a good thing, but it's also a bad thing."

— *Sonia Miller-Van Oort*

Our firm has an electronic "out" list and 20 years ago you wouldn't have imagined a male attorney putting on there, "home with a sick kid today," but now that's very common.

Kim Lowe

Now both parents are participating in parenting. Men and women equally. My male partners are spending just as much time parenting their children as their professional wives are. There's now this complete expectation that it's different than it used to be, where men can stay at work and women have to go home and deal with this, where now I think you just find so much more where both parents are participating in the parenting.

Adine S. Momoh

I don't like the phrase work-life balance because the balance always changes. I try to set priorities. I don't think of it as work-life balance, am I getting enough of it? I think that's too stressful. I don't think that helps with respect to the wellness conversation. For me, as long as I have my priorities in check, which would be my family and faith at the top, career number two, and the friends, social gatherings, etc. number three. Family is always going to be there, but career is fleeting at the end of the day.

Courtney Ward-Reichard

I remember very early on in my practice just absolutely dying if a mistake was made on a file or if something wasn't as good as I thought it would be. I realized that the men around me, not only the associates, but also the more senior partners, had a "been there, done that; that's the human condition" attitude.

It's going to be fine, and you're going to figure it out, it's not the end of the world. Maybe the male associates around me were just so confident. Learning to not sweat something happening that you don't want to have happen, [understanding] it's not going to be the end of the world, you lost the motion, and you figure out how to move forward. That was really an important lesson for me in terms of that work-life balance, not taking it home with me and not panicking constantly like I did when I was 23.

LEADING THE BAR**Sheryl Ramstad**

One of the things that I really value as I look back over my career was bar association involvement. I feel very fortunate that I had the opportunity to make friends not only locally, but statewide, nationally, and internationally through the profession. Having now gone into health care, when people say, "Do you miss the law?" I say the law informs my thinking and everything I do. I maintain my bar memberships. I just don't want to give that up because it's part of who I am.

Courtney Ward-Reichard

The history of the association was always really meaningful to me.... I would sit in meetings and think about that a lot. I would think about somebody who was president of the association in 1928 and how different the practice would have been then, and how the world would have been then. It just meant a great deal to me to be a part of that legacy.

Jewelie Grape

The thing that sticks out for me the most was how everyone wanted me to succeed. Whenever I discussed being HCBA president with a fellow attorney, one of the first things that most said was—let me know if there's any way I can help you. It reminded me what a collegial bar we have and how grateful I was for their support.

Jean Holloway

That year, I worked with the Minnesota Chief Justice to lobby the State Legislature for full funding for the judiciary as well as responsible limits on gun control. We were more successful on the former than the latter, but I learned a lot—particularly how important the HCBA voice can be.

**Adine S. Momoh**

I remember when I was president-elect, so many people kept asking me, are you ready for this? Do you think your practice is going to survive? I took these questions to be of negative energy. When I started my presidency, I wanted to raise the bar and work hard to achieve the goals that I articulated during my presidential installation. So, my response to those questions was mostly that I'm not slowing down my practice, I'm not taking time off. I'm going to continue building my practice, I'm going to continue to travel, and I'm going to succeed. I have my family. I'm just going to keep it moving and on top of that, I'm going to be president. Looking back on it, people have asked, how was it? Do you feel relieved? Are you glad it's over? I remain positive as I look back on my presidency with pride. This was such a once in a lifetime opportunity to have. I accomplished a lot. The executive committee, board, and staff that I worked with accomplished a lot. Members and nonmembers were excited and engaged. I'm proud of the experience I had.

Kim Lowe

[Bar presidency] does set you up for a lot of other responsibilities. You have training to do other things that you don't think about. Experientially, it just moves you further along in a food chain of experiences that allows you to do other things than just go to court.

Adine S. Momoh

How many of us can say that we've walked into a room and spoken to about 300-some people? People can't say that. It's not an attorney thing. Many people cannot say that they have spoken to a crowd, or had the benefit to advocate on this position, or got to appear in front of the Supreme Court on this issue. It opened so many doors. It takes you out of your comfort zone in ways you can't even imagine. You're so vulnerable. You're writing and talking about so many things...We have to be positive when we reflect upon our experiences because that's the only way that younger attorneys and women are going to want to do this.



HCBA WOMEN PAST PRESIDENTS

2010s



2018-2019
Adine S. Momoh



2015-2016
Kim Lowe

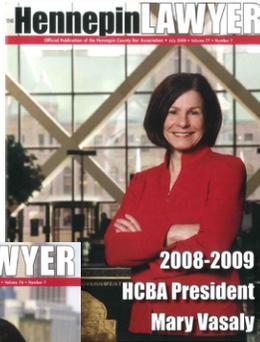


2011-2012
Jewelle Grape



2010-2011
Courtney Ward-Reichard

2000s



2008-2009
Mary Vasaly



2007-2008
Sonia Miller-Van Oort



2005-2006
Marlene Garvis

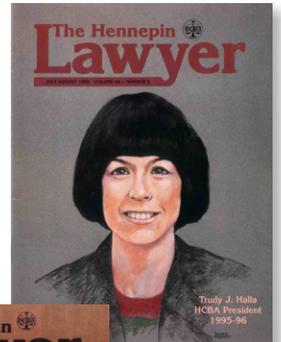


2002-2003
Jean Holloway



1999-2000
Susan M. Holden

1990s

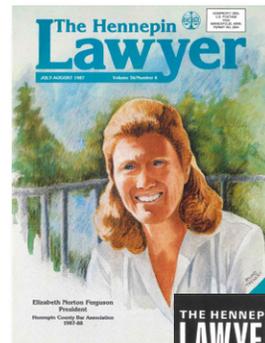


1995-1996
Trudy J. Halla



1991-1992
Sheryl Ramstad

1980s



1987-1988
Elizabeth W. Norton



1981-1982
Helen I. Kelly



Jumping the Gender Fence

By Ellie Krug

Lessons Learned by a Newly Minted Woman



I am often asked what it was like to transition from male to female while practicing law and how it is to now live as a woman after presenting as male for more than five decades. The answers to those questions are both different and intertwined. Since I am a woman and openly identify as transgender, I am tasked with navigating the world both as a woman and as a transgender person. This comes with unique challenges.

Soon after I transitioned from male to female in May 2009, the male U.S. general counsel of a major international transportation client I had represented for more than 20 years said, “I think I get everything, Ellen, but my primary concern is your aggressiveness in the courtroom. A big reason why you’re our attorney is that you’re very tough. That’s fine for a man, but an aggressive woman? I’m worried a jury will think you’re, excuse the phrase, a ‘b****.’ How do we handle that?”

That commentary was sparked by a three-page “coming out” letter I had sent to him; the same letter went to another 200 clients, colleagues, and judges. The letter explained that I was transgender and from there on out, I would present as female. At the time, I was in my 27th year of practicing law with a thriving civil trial practice in Cedar Rapids, Iowa.

The man’s words, which still ring in my ears even today, pointedly underscored how different things would be for me going forward as female compared to the 52 years I presented as male. My concern was no longer just how I would be perceived as a transgender person, but how my approach as someone who was not socialized as a female would come across to others.

My response to the client was that I believed speech therapy (which I had been undergoing for several months) would help soften both my voice and demeanor/approach. Along with an impressive courtroom batting average, I hoped that would be enough to placate the client’s fears. As fate would have it, the last time I ever appeared in court—in September 2011 before the Iowa Supreme Court, where I made history as the first transgender lawyer to argue a case there—was on behalf of that very client. To their great credit, the general counsel and client had stuck with me to the end.

Unfortunately, that was not the case with most of my other institutional clients, who by then had abandoned me and my firm. My transportation law defense practice involved many high exposure death and injury cases, meaning that the clients weren’t willing to risk millions on having a transgender lawyer appear for them, no matter how good my track record.

Consequently, I moved from practicing law to serving as a Minneapolis legal access nonprofit executive director. By 2016, fulfilling a deep idealistic passion, I began doing what I do now—speaking and training on human inclusivity across North America.

Hard-Earned Gender Lessons

What have I learned as I jumped the gender fence from male to female?

A whole lot of what I didn’t expect, it turns out. Note, however, that of the things I relate below, I do so with a broad brush; space limitations for this article do not allow for getting into many nuances. Still, you’ll get the idea.

In transitioning genders, I have realized that all humans—both male and female—respond to men differently than they do to women. This seemingly obvious lesson was driven home when I noticed that people reacted to me as Ellen with indifference, in stark comparison to their reactions to me as a man.

Thus, whether it was in a nonprofit board setting, a condo association meeting, or even a bar committee gathering, when I spoke while presenting as male, people paid attention and even nodded along as I made my points. Clearly, they respected what I said and afterward, it was common for some to approach and say, “Excellent points, I totally agree!”

Speaking as Ellen—“Ellie” to my friends—generated different reactions. Soon after transitioning genders, I realized that listeners appeared distracted, even fatally bored. Rather than attentive faces, I now saw humans—men and women—checking smartphones, looking out windows, or just plain being inattentive. No longer was I greeted with “Good point!” and, instead, folks seemed as if they could not get out of the room fast enough.

But that is not even close to describing the extent of tectonic gender shift I’ve experienced: six years ago, I was a board member for a Minneapolis neighborhood association. We had a Saturday retreat with 30 or so people in the room—there was a handful of men, but most were women aged 40 and above. At one point, we tackled the subject of preserving original architecture in Dinkytown, near the Minneapolis campus of the University of Minnesota, an area that has long been the focus of intense development that has resulted in many older buildings of character being torn down, only to be replaced by boring, look-alike high-rise apartments and chain retailers.

Pushing back against out-of-control development, I made an impassioned plea to enforce what I understood were original zoning rules that promoted preservation over development. Admittedly, my knowledge of Minneapolis’s zon-

ing regulations was quite lacking; yet, I thought my passion would make up for any nuances that I did not fully understand.

As soon as I stopped speaking, a man stood up. He was in his early sixties and an architect who knew significantly more about the city’s zoning laws than me. His response: “Ellen, you have either intentionally misstated the facts or you’re just plain ignorant.”

My immediate reaction was to think, *What the hell did you just say to me?*

Publicly, as Ellie—a newly minted woman who was still trying to understand how all the rules had changed for her—I could only muster, “It’s been a long time since someone has called me ‘ignorant.’”

That was absolutely true. The word “ignorant” had not been thrown at me since an arrogant, narcissistic male partner needlessly attacked me in private when I was a wet-behind-the-ears associate in Boston. In the hard-earned 30 years since then, I had built a reputation as a smart, hard-working, considerate, collaborative human. Now, some random person felt he had the right to humiliate me in front of my peers. I knew that this reaction had everything to do with his being a man and my being a woman. In similar circumstances, such words never were tossed my way when I still presented as male.

On top of that public mansplaining, I learned another important lesson of womanhood that morning: not one of the women in the room rose to my defense. There was not a single, “Excuse me, but I wonder how your words just made Ellie feel?” I did not even get another female sliding up to whisper, “Are you okay?”

I am sorry to report to my sisters-in-arms that women are slow to support other women when they are under attack by men. This, too, I did not understand going in, but I have witnessed such grave allyship omissions many times since.

Apart from bitter public experiences, other womanhood lessons came from personal observation and speech therapy. One of the simple personal observations: women love exclamation points! When I presented as a man, my emails rarely, if ever, contained exclamation points—why bother? I’d end my emails with, “Have a great day.”

However, once I transitioned genders, I realized that most emails from women contained at least one, if not multiple, exclamation points.



"Sometimes
a woman's
gotta do
what she's
gotta do."

Their emails might end with, "Have a wonderful day!" Heck, there might even be a second exclamation point just to make sure the reader understood the full extent of the writer's sincerity.

As Ellie, I started adding more exclamation points to my emails and correspondence to ensure that the overall communication appeared more feminine. Indeed, even now, I will review draft emails to ensure that I have added enough exclamation points.

Yes, it is a lot of work, but for most genetic females who have been socialized to communicate in a certain way since birth, it comes naturally.

Speech therapy was an altogether different revelation. The University of Iowa speech therapy school (20 miles from Cedar Rapids) is considered among the best in the country, and, thankfully, even way back in 2008, its director understood the need to assist transgender people in their transitioning.

Thus, with the help of several graduate students, I worked on raising the pitch of my voice, because society expects women's voices to sound softer and higher than men's voices. (A note to those who know me: believe it or not, I am several octaves higher as a result of that speech therapy.)

While the need to change my vocal pitch was a given, what I did not expect were the many rules around "feminine speech patterns"—the ways that women speak differently than men speak.

For example, if in need of more water at a restaurant, a man likely would say to a server, "We'll take some more water here." Most would not even bat an eye to that near-order from a man.

Certainly, that is the way I spoke when I presented as male.

In contrast, the speech instructors shared about female super polite, and even apologetic, speech patterns. Using our restaurant scenario, a woman likely would say, "Excuse me, I know you're so busy *and I'm sorry to bother you, but when you get a chance, would it be possible* to bring more water? Thank you!"

I reacted to this by asking, "Why do I have to go to such elaborate lengths just for a water refill?"

The instructors' collective response: this is what is expected of women and for me, with an allegedly "masculine" voice already, it was essential that I use feminine speech patterns to help me "pass" as female.

While I understood that and was willing to shift away from male directness, I was more reticent about using female "hedges." An example of a female hedge: "I *sort of think* it would be good to see that movie."

That compares to a man just saying, "I want to see that movie."

While the latter just seems so much simpler, my speech instructors reminded me that without hedges in my speech toolbox, I would likely land in the "aggressive woman" category—the very label that my transportation general counsel client had warned me about.

I learned about other feminine speech patterns, too, like "tag questions," such as, "That was a wonderful movie, *wasn't it?*" A man would say: "It was good. I liked it."

Finally, women habitually use exaggerations and elaborations, such as, "I *so love* that top of yours! The colors *just pop* and look *absolutely wonderful* on you!" Meanwhile, assuming he would even be inclined to give a compliment, we all know how a man would say: "That's a nice shirt."

Initially, I was very reluctant to embrace many of these speech patterns because I viewed them as "subservient." No way was I going to cede

speech territory that I had acquired simply by virtue of my maleness. Yet, as I transitioned genders, it became very clear that I darn-well needed to change how I spoke or otherwise, with this voice of mine, I would be viewed far less feminine than I wanted. So, I gave in and shifted my speech patterns as much as I could.

It took *such incredibly hard work*, but in the end, I am *so very thrilled to report* that I adapted *exceedingly, even marvelously, well, wouldn't you agree? Thanks!!*

My Evolution Theory

We all know that gender roles are cemented through socialization that begins at birth. Because we are hard-wired to group and label all humans, it is accepted as entirely normal to demand that a mother reveal the gender of her newborn. Indeed, depending on genitalia, a baby may be clothed in pink or blue caps and socks within seconds of birth.

Those colors—pink and blue—go on to dictate much of what follows in life, like clothing, children's books, toys, friends, and even career. Most importantly, the colors and their underlying gender differences influence how others interact with the human in question; there are expectations about "behaving like a girl" and "behaving like a boy." Try as we might to be nonbinary in 2020, most of our expectations and wants are dictated by the gender one is assigned at birth.

Because I was deemed male based on having a penis-scrotum glob at birth (yes, you just read that phrase in the *Hennepin Lawyer*), society largely taught me to be "rough and tumble"; it was okay for me to occasionally engage in fistfights in grade school. My middle and high school sports (football and, sometimes, basketball) by necessity involved intense physical contact—in fact, I was praised for being the hardest-hitting player on the freshman football team. Did I mention that I was shaving by age 12 and sported a full-grown mustache at 13 that helped cement my (on-the-surface) masculine persona and "jock" role?

Even today, in our age of "gender enlightenment," most would be reluctant to cast praise on a female teenager who enjoyed engaging in physical contact sports. For sure, we have the occasional "girl" who goes out for football, and certainly there's women's field or ice hockey, but for the most part, gender roles remain separate and distinct beginning at early ages. The designation "jock" is not regularly applied to humans with vaginas, and when it is, a sexuality connotation (a whole different discussion) often attaches.

Most importantly, based on birth gender, we have expectations about emotional intelligence and public displays of emotion. Putting aside that Minnesotans have particular challenges around showing emotions (now, I just stereotyped an entire state but a fair number of readers also reflexively nodded in agreement), the reality is that socialization often dictates a certain kind of public emotion from one gender and suppresses it in the other gender.

Again: society deems females “soft” and males “hard” or “tough” and treats them as such, which doubles down the proclivity of each gender to act according to its ascribed role. My theory is that this, too, is hard-wired and has its roots in the hunter-gatherer society where the males of the tribe or clan were responsible for killing the evening meal—not something that lends to regular expressions of emotion over taking a living thing’s life.

On the other hand, the females who remained at the camp were more likely to be called upon to comfort children and elders who were unable to fend for themselves. Importantly, females were accustomed to wrapping arms around other humans; males, not so much.

You may question this, so let me relate something that I have consistently found when I engage in my training, “Changed Genders, Changed Perspectives,” which explores how it is different for me to live as female compared to living as male. In that training, I have an exercise where I ask a man and a woman to walk from opposite sides of the room toward each other, with each holding a yellow or red folder. Inevitably, the man will carry the folder at his side (hips or thigh), whereas the woman will carry the folder against her chest, something I call the “baby carry.” Furthermore, often the man holds himself confidently while the woman appears far more tentative.

Bearing in mind that I am a lawyer and not an anthropologist, my theory is that for a gazillion years of human evolution, males brought the bleeding, dead game back to camp by holding the prey at hip or thigh level (so as to avoid the blood). They did so with confidence and pride—“look at what I accomplished.” Meanwhile, women, tending to newborns or young children or elders, kept them at chest level to shelter against the elements or to comfort due to frail age or infirmity. Doing so meant being soft and responsive.

These simple, basic mannerisms or behaviors became ingrained in our humanhood so much so that today, they largely dictate certain expectations around gender. This translated to my changing how I carry things, like my coat, when I walk in the skyway. As a man, that coat would have been at my side; now, as a woman, I hold it folded against my chest, with arms crossed.

Continuing with my novice gender evolutionary origins theory, the common expectation is that men will have power. For sure, they are accorded power and stature far more easily than women, something that we see in the legal profession every day. Most of the country’s high-power law firms were created by white men who enjoyed the luxuries of time and possibility, while their wives or significant others tended to children and homes. Thus, once again, we have the difference between hunter-gatherers and baby carriers.

Those firms succeeded in part because men had the time and opportunity to build something and to then capitalize on their success—things that would not have been nearly as easy had those men been required to balance career and

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the responsibility of parenting or daily caring for an elderly parent. In this sense, the “baby carriers” clearly underwrote the ascension of the legal “hunter-gatherers”; the problem was (and remains) that the baby carriers got little-to-no credit for this and, to boot, the hunter-gatherers made no room for anyone but their own kind (i.e., male hunter-gatherers).

When I presented as male, I took all of this for granted and I had absolutely no clue whatsoever of the privilege and power that I enjoyed.

Going Forward

While I have painted quite a picture of these systems and dynamics being deeply engrained in us as human beings throughout our evolution, there is something we can do about changing our dynamics, how we perceive gender, and how we advocate for nonmale folks.

First, males (that is, the hunter-gatherers) can begin by acknowledging that much of what they have achieved was made possible by the implicit partnership they made with women (the baby carriers) in their lives. This, in part, requires giving wives or life partners their due. However, in the context of a legal employer, it requires acknowledging that the women who show up (be they lawyers, administrators, or support colleagues) often are doing a double duty (career and family) that many males have the privilege of avoiding.

All too often, women are penalized for that double duty. Instead, I would offer, they should be praised, even rewarded. Most certainly, they should not be marginalized because they are “part-time” or “in transition.”

Secondly, males in power need to show up as allies to women. This is not a lunch once a year or showing up at a mentorship mixer; rather, true allyship requires devoting time and expending political capital to raise up women who otherwise lack voice or power. If you are a “woke” male, you already understand this; now, you need to carry the water. This may mean being the squeaky wheel who pushes back against the status quo, the one who time and again says, “We need more women in the room.” Certainly, that involves risk-taking; darn it, please take the risk!

I realize it is very difficult to buck other hunter-gatherers but trust me—a former hunter-gatherer myself—allyship is critical. If you do not speak up for my sisters and me, literally no one else will. That much has been made clear by history, and the silence is deafening even today.

Thirdly, to my sisters reading this, you need to show up, too. Frankly, I am appalled at the number of times I have seen women denigrate other women in terms of appearance, education level, or socioeconomic status. I have been equally ashamed in instances where women have stood by silently while men have blatantly controlled or exercised power over other women. This must stop. We cannot move forward if we do not look out for each other—again, something that takes risk and courage.

Still, I do not want to be a Debbie Downer here. Please read this loud and clear: many times, I have seen women speak up for other women or children or marginalized humans of all ilk, often in magnificent ways. Equally so, I have witnessed women risk their physical lives for others who are at risk (think of the Hindu Indian women who pushed away men seeking to beat Muslim Indian women late last year). The guts, resiliency, and selfless bravery that women demonstrate for those most vulnerable is legendary and worthy of awe. We need to celebrate how women display courage and grit, just as we highlight their emotional intelligence and support.

All of this takes mindfulness and hard work—things in short supply in the legal profession with its super-charged stress, deadlines, and profit margins. We so lag on diversity and inclusion—largely because many hunter-gatherers do not see the value of allowing non-hunter-gatherers in—that we are held up to ridicule in many strata. The reality, however, is that most lawyers *really do* want to get it right; many of us entered this profession to make the world better and to improve the lot of humans who do not have voices or access to resources.

Fundamentally, what I am saying is this: women want and deserve an equal place at the table. I was so oblivious to this when I presented as a high-powered male. I now better understand that the good-old-boy system still to this day does not recognize women for their worth. We must acknowledge this deficit and work to correct historical wrongs (and concomitantly change internal marginalizing systems) that hold women down. Once again, this takes speaking up, mainly by males who hold power.

Lastly, speaking to the women reading this, I have one more item: consider the girls and women who are invisible. Watching out for other females requires a broad net and imagination. What are you—the women of the legal profession—doing to lift up those who occupy the lowest rungs of society’s ladder? In the Twin Cities, what outreach have you conducted to marginalized girls and women in low-income neighborhoods? I would offer that you are *obligated* to do such outreach.

One way that I have chosen to give back is to volunteer to be a mentor to a young girl through Big Sisters Twin Cities since 2012. It has been among the most rewarding experiences of my life—I have gotten from her as much as I have given. (And to underscore the point, mentoring is the last thing I would have done when I presented as male.)

We have wisdom and experience, my sisters. We need to share that, and as well, we must learn from others with different life experiences. This is how we go forward as a profession and as compassionate humans. Most of all, America needs this, particularly now.

One Last Lesson

Two years ago, when the developer for my new downtown Minneapolis condo building ceded control, I was elected president to the condominium board of directors. For a year, I oversaw board meetings and helped field unit owner questions and concerns; for the most part, the unit owners seemed appreciative and genuinely supportive.

It was not entirely clear sailing, however. Some male board members resisted my no-nonsense “let’s just get this done” approach. This came to a head when a particular male board member pressed me on an item about which he felt I had not been transparent. Even though I and others explained that he was mistaken, he unrelentingly pushed against my authority. Quickly, the pushing became personal and denigrating; it overwhelmed me.

In response, I lost it. The f-word flew out of my mouth several times. In an instant, I was back to being a tough, aggressive lawyer barking at an adversary—the stuff that my clients loved about me as a man.

Maybe I did not absorb that speech therapy stuff nearly as much as I had so smugly presumed. On the other hand, sometimes a woman’s gotta do what she’s gotta do.

Ellie Krug

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In 2016, Advocate Magazine named Ellie Krug one of “25 Legal Advocates Fighting for Trans Rights.” She is a monthly columnist for Lavender Magazine and pens a widely-circulated monthly e-newsletter, The Ripple, that reaches 9000 readers. She views herself as an “Inclusionist” and founded an inclusion-oriented consulting and training company, Human Inspiration Works, LLC, in 2016.



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The Groundbreaking Minnesota Human Rights Act: In Need of Renovation

By Jess Braverman and Christy Hall

As a nonprofit organization dedicated to advancing gender equity through the law, the Minnesota Human Rights Act (MHRA) is Gender Justice's favorite statute. The MHRA recognizes and declares that the opportunity to obtain employment, housing, public services, education, and access to public accommodations without discrimination is a civil right. It allows people who have been discriminated against based on their membership in a protected class to sue in order to obtain damages and other backwards-looking relief, along with policy changes and other equitable relief to ensure the discrimination does not continue.

Unlike many federal civil rights statutes which govern discrimination only in limited and targeted areas, the MHRA is a one-stop shop for comprehensive discrimination protections. It prohibits not just employment discrimination, but also education and housing discrimination among others. The MHRA is also groundbreaking. In 1993, it became the first state-level anti-discrimination law in the nation to expressly ban discrimination against transgender people. The first city to do so was Minneapolis back in 1975.

While there is much to celebrate about concerning civil rights in our state, there is still plenty of room for improvement. Unfortunately, the MHRA has some key blind spots around both sexual orientation and gender identity and expression. This is an artifact of the 20-year battle to add sexual orientation to the law. In 1973, the Minnesota Senate was the first state legislative body in the country to pass protections based on sexual orientation in a civil rights bill, but that language was stripped from the final bill before it was passed by the House and signed into law. This kicked off a 20-year effort to add LGBTQ protections to our state's civil rights law. During that time, Minneapolis and St. Paul passed city civil rights ordinances protecting gay people. But St. Paul's ordinance was the victim of the fledgling religious right movement that in 1978 held public referendums to repeal nondiscrimination ordinances in cities across the country including Wichita, Kansas, and Eugene, Oregon. Sexual orientation was not re-added to St. Paul's civil rights law until 1990 after a two-year fight.

Minnesota's first openly gay state legislators, Allan Spear and Karen Clark, did not give up on efforts to add sexual orientation to the list of protected statuses in the Minnesota Human Rights Act. As detailed in a recent research effort published in the *Minnesota History* magazine, state Senator Spear was committed to the strategy of incrementalism: "taking baby steps, winning rights for some groups ... and

building upon those victories." During his 20-year campaign for gay rights in Minnesota, Spear "reassured colleagues that, contrary to what his opponents suggested, [the MHRA] bill was not an endorsement of homosexuality, but 'an affirmation of the premise that all people have right[s].'"¹

The final successful bill, passed in 1993, reflects compromises on gay rights that gave cover to legislators that needed this reassurance.² While these compromises might have been necessary to achieve success after a 20-year struggle, today the language in the bill rankles.

Goins v. West Group

One of the drawbacks of being early to recognition of civil rights is that courts, without much precedent to turn to, have greater leeway to temper civil rights victories when tasked with interpreting the laws. One of the most salient examples of this in our state is the 2001 case *Goins v. West Group*. In Minnesota in 1997, a female transgender employee of West Group was barred from using the women's bathroom. She went to court, seeking the protections of the MHRA. The case ended up in front of the Minnesota Supreme Court in 2001.³

Prior to the *Goins* case, the Minnesota Supreme Court acknowledged time and again that the legislature "cautioned [the court] against narrowly construing any provisions [of the MHRA]."⁴ The statute itself mandates that its provisions "shall be construed liberally for the accomplishment of the purposes thereof."⁵ Nevertheless, the Minnesota Supreme Court concluded that the MHRA cannot "be read so broadly" as to ensure transgender employees can use the proper bathrooms at work. This is because "the traditional and accepted practice in the employment setting is to provide restroom facilities that reflect the cultural preference for restroom designation based on biological gender." But isn't the very purpose of anti-discrimination laws to ensure that we break from prevailing discriminatory traditions? Including problematic and discriminatory traditions related to bathrooms? To this day, *Goins* is a blight on Minnesota's reputation as a leader on transgender rights.

While the judiciary works on correcting the error of its ways, the legislature has a lot of work to do as well for improving the MHRA for LGBTQ Minnesotans. Transgender protections are currently buried in the act under the definition of "sexual orientation." "Sexual orientation" is defined as "having or being perceived as having an emotional, physical, or sexual attachment, or having or being perceived as having a self-image

or identity not traditionally associated with one's biological maleness or femaleness."⁶ Sexual orientation and gender identity are related but separate concepts, making the MHRA both inaccurate and confusing. Sexual orientation refers to romantic or sexual attraction while gender identity refers to a person's sense of their own gender, which may or may not correspond to the sex they were assigned at birth. While the distinction may seem like a minor point, it is one that needs to be explained, corrected, and commented upon any time a transgender client claims anti-discrimination protections for "sexual orientation discrimination."

The MHRA provision was based on Minneapolis's groundbreaking ordinance, the first in the country, expressly protecting transgender people from discrimination. In 1974, Minneapolis enacted an ordinance prohibiting discrimination based on sexual orientation, labeling it discrimination based on "affectional preference." In 1975, the definition of "affectional preference" was amended to include "having or projecting a self-image not associated with one's biological maleness or one's biological femaleness."⁷ The MHRA provision mirroring the Minneapolis ordinance passed almost 20 years later, in 1993, marking another first for the country. And perhaps the inclusion of transgender Minnesotans as a subset of sexual orientation was necessary at the time to pass a bill protecting trans Minnesotans from discrimination.

Gender vs. Sex

Today, over 225 jurisdictions and 22 states have followed Minnesota's lead to expressly prohibit discrimination based on gender identity and expression. Additionally, many state and federal courts define "sex" in antidiscrimination provisions to cover the related but distinct concepts of sexual orientation, gender identity, gender expression, and transgender status. This issue was recently before the Supreme Court in the context of Title VII of the federal civil rights act. Title VII prohibits discrimination in employment based on "sex." The question before the Court in a trio of cases is whether gay and transgender employees are protected under "sex." We believe this question must be answered in the affirmative. If you are fired for reasons related to your sex assigned at birth, or because of the sex of the people you date, then this is plainly sex discrimination. For those who need more convincing, if your employer fires you because you do not meet their expectation of what you should look like or who you should love based on your sex assigned at birth, this is clearly sex stereotyping, a prohibited form of sex discrimination recognized by the Supreme Court in *Price Waterhouse v. Hopkins* in 1989.

We are currently awaiting the Court's decisions. Regardless of how the Supreme Court rules, however, LGBTQ Minnesotans are protected thanks to the express terms of the MHRA.

Perversely, the express inclusion of sexual orientation, gender identity, and gender expression in laws like the Minnesota Human Rights Act is a fact cited by anti-LGBTQ groups to argue against LGBTQ protections in other jurisdictions. They argue that the availability of this language suggests that a statute that omits an overt reference to sexual orientation or gender identity cannot be read to offer protections for those categories, even if the statute prohibits discrimination based on sex. At Gender Justice, we believe that all of these forms of discrimination are related, and that any anti-discrimination law that prohibits sex discrimination protects all people from discrimination steeped in stereotypes and expectations based on a person's sex assigned at birth. But pragmatically, to avoid any argument that removing the language about gender identity and expression from the definition of sexual orientation also removes those rights, the best approach for amending the MHRA to disentangle sexual orientation and gender identity would be to separate out the related but distinct concepts of sexual orientation, gender identity, gender expression, and transgender status, and place them all under the umbrella of "sex."

While the Minnesota Legislature is working to amend the definition of sexual orientation, it will also want to remove the insinuation that LGBTQ Minnesotans are sexually attracted to children. The definition of "sexual orientation" includes the outrageous and insulting caveat that it "does not include a physical or sexual attachment to children by an adult." Along the same lines, the statute goes out of its way in an innocuously titled "Construction of Laws" section to vociferously reject the idea that the State of Minnesota "condones homosexuality or bisexuality or any equivalent lifestyle."⁸ While it might have been pragmatic in 1993 to include this language as cover for legislators who could say they didn't "endorse homosexuality," this kind of language has no place in a civil rights law, and its erasure is long overdue.

Another pervasive problem can be found in the exceptions permitting discrimination in select circumstances. The exceptions repeatedly single out LGBTQ people for lesser protections. For example, it isn't unlawful for religious or youth scouting organizations to refuse to hire an LGBTQ person, perhaps a nod to the Boy Scouts which banned LGBTQ participants altogether until 2014, and from leadership positions until 2015. A resident owner of a duplex can refuse to rent the other unit to a gay person or LGBTQ family.

Youth teams can discriminate against LGBTQ youth and adults. And religious societies can refuse to admit gay members.⁹ The overall effect, of course, is to strongly suggest that the state of Minnesota thinks that it is a lot harder to tolerate LGBTQ people than other protected groups, so discrimination against LGBTQ people is acceptable in many more contexts.

Particularly insulting and detrimental are the foci for these exemptions. Many of them occur in youth-oriented contexts, endorsing and reinforcing the bigoted myth that gay people are both attracted to and harmful to children. The religion-specific exemptions likely run afoul of the state and federal constitutions' establishment clauses by singling out and coddling particular religions with negative views of LGBTQ people over all other religions.¹⁰ We know that many religions do not have LGBTQ intolerance as a bedrock of their belief system, and many that used to profess such intolerance are actively rethinking those stances.

Finally, we know that all LGBTQ people also fit in to other protected class categories. For example, everyone has a race, national origin, and identity as a religious or non-religious person. Discrimination, like identity, is not always singular and clear cut. For example, an employer may treat black trans employees differently from white trans employees, and differently from non-trans employees as well. The MHRA could expressly recognize the intersectional nature of both identity and discrimination by simply changing "or" to "and/or" whenever it lists out the protected classes. This slight edit could signal to courts that discrimination that cuts across protected classes is also common, is also unlawful, and intersectional claims should not be immediately treated with skepticism.

Like the *Goins* decision, warts on an otherwise excellent civil rights law come from Minnesota taking an innovative approach to preventing discrimination. We would never want to give that up. But perhaps one of the lessons of an incrementalist approach to civil rights is that the next generation of legislators must continue the struggle even after the initial goal is met. The problems we have highlighted have been on the books for 27 years, making them older than our youngest state representative, who it just so happens, is openly gay. We are hopeful that the state of Minnesota will reinforce its reputation as a trailblazer for civil rights protections by providing much needed renovations to the MHRA. In the meantime, we at Gender Justice will continue our fight for gender equity with the tools we have, warts and all.

Notes

- ¹ Preston, Joshua. *Senator Allan Spear and the Minnesota Human Rights Act*. Minnesota History Fall 2016, 76.
- ² Chapter 22 H.F. 585, 78th Legislature. 1993 (Minn.).
- ³ 635 NW.2d 717 (Minn. 2001).
- ⁴ U.S. *Jaycees v. McClure* 305 NW.2d 764 (Minn. 1981).
- ⁵ Minn. Stat. § 363A.04.
- ⁶ Minn. Stat. § 363A.03 subd. 44.
- ⁷ Moglin, Emma, *How Minneapolis Became the First City in the Country to Pass Transgender Protections*, MSNBC June 6, 2016.
- ⁸ Minn. Stat. § 363A.27.
- ⁹ Minn. Stat. § 363A.20-26.
- ¹⁰ *Estate of Thornton v. Caldor, Inc.*, 472 U.S. 703, 710 (1985).



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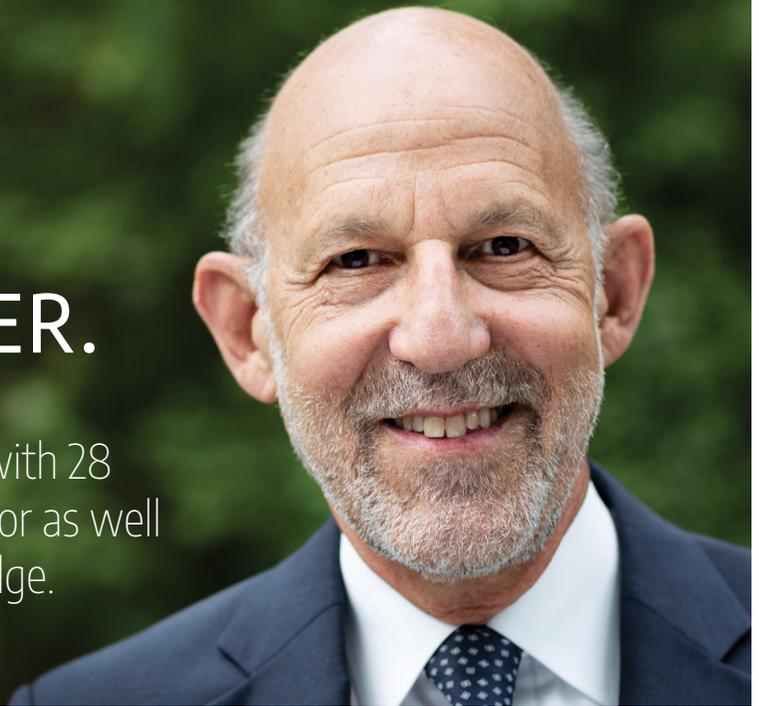


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WORKING WITH TRANSGENDER CLIENTS

By *CB Baga*

The institutionalization of gender is at a tipping point. “They” was recently announced to be Miriam-Webster’s word-of-the-year for 2019. Three percent of high school students now report that they do not identify as cis-gender.¹ Top law firms have added gender pronouns to their standard signature blocks. Legal scholars have tackled the few, but nuanced, changes that the law needs to make to hold space for all genders.² Fifteen states and a number of countries now formally recognize nonbinary genders in legal documents.

And yet, no data is formally collected on transgender citizens in the United States. Despite being a small percentage of the population (which is growing as individuals recognize their authentic identities), transgender people disproportionately experience harm:

- 50-66% of transgender individuals have experienced sexual assault, compared to 18% of men and boys in the general population, and 33% of women and girls in the general population

- 50% of transgender individuals are survivors of intimate partner violence
- 40% of homeless youth are LGBT
- 32% of LGBT youth have faced physical, emotional, or sexual abuse at home
- 20% of transgender people have experienced housing discrimination, and more than 10% have been evicted because of their gender identity
- 15-20% of transgender people have been the victim of stalking, compared to only 5% of the general population

And 91% of transgender respondents to a survey from the UCLA Law School had an outstanding legal issue with which they needed help.³

Common Legal Issues for Transgender People

The legal community often talks about the law as a source of remedies. The trans community most often encounters the law as a source of problems. As a member of both communities, I know firsthand the immense harm the law has caused to trans people.

For example

- Punitive national laws, policies, and practices targeting transgender people, complex procedures for changing identification documents, and social hostility/exclusion strip transgender people of their rights and limit access to justice.
- Workplace-related research on lesbian, gay, bisexual, and trans (LGBT) individuals reveals that trans workers are the most marginalized group and are excluded from gainful employment, with discrimination occurring at all phases of the employment process, including recruitment, training opportunities, employee benefits, and access to job advancement. This environment inculcates pessimism and internalized transphobia in trans people, discouraging them from applying for jobs. These extreme limitations in employment can push trans people toward jobs that have more safety and security risks, such as beauticians, entertainers, or sex workers. Unemployment and low-paying or high-risk and unstable jobs feed into the cycle of poverty and homelessness.
- Medical institutions burden trans people with high additional expenses and isolation by requiring long stays in recovery rooms while

waiting for single rooms, and even putting warnings on patient doors that are not used for cis patients with the same conditions.

- When homeless trans people seek shelter, they are typically housed with groups based on their sex assigned at birth, even when it does not match their presentation, their lived experience, or any other aspect of who they are; they are also subject to abuse and humiliation by staff and residents.
- Laws were enforced, even in recent decades, criminalizing trans people's very existence through legislation that punishes so-called unnatural sex, sodomy, "buggery," homosexual propaganda, and cross-dressing. Criminalization and mistreatment by law enforcement continue with unchecked profiling, discrimination, and harassment.⁴

Anti-Trans discrimination in action:

In 1990, a trans woman, who at the time was identifying as a gay man, was arrested under a state sodomy law for consensual homosexual activity. Based on that charge, she must register as a sex offender for life. Yet, in 2003, *Lawrence v. Texas*⁵ found these statutes unconstitutional. Now, trying to change her name, she faces barriers to accomplishing that goal. Under the statute, the prosecutors raise a routine objection that the name change should be denied "on the basis that the request aims to defraud or mislead, is not made in good faith, will cause injury to a person, or will compromise public safety" under Minnesota Statute § 259. And yet, if she does not get her name change, she faces violence and can be denied services based on the fact that her legal identification documents appear incongruous to her presentation. Since arrests, charging, and convictions for sodomy were often based on evidence such as perceived gender, transgender individuals were disproportionately affected and marginalized even within the LGBT community to begin with. Today, even the unconstitutional laws continue to oppress the community beyond the date they were invalidated.

Experience with laws criminalizing their lives have discouraged trans people from interacting with the law or seeking justice, leading to further marginalization. When picked up for any of the aforementioned alleged crimes or under vague "public nuisance" or "vagrancy" laws, abuse can continue at the hands of the police or inmates in criminal justice systems that fail to appropriately provide basic healthcare and other needs for trans inmates.⁶

As a result, the transgender community operates by relying on word of mouth. Every space must be presumed unsafe until proven otherwise. The legal community, to the extent we wish to change the status quo and serve transgender and gender-diverse clients, must affirmatively prove itself to be culturally competent.

As an attorney, you owe your clients a duty to be competent in your area. Just as you must be competent in the norms of an industry to best serve a client in that industry, you must also be competent in the norms of a client's culture in order to best serve that client. If you plan to serve transgender or gender diverse clients, you must actively educate yourself and stay current with the community.

TIP NO. 1

Use the correct terminology for your client and ensure that all others interacting with your client will too, even if that involves hard conversations with the court.

Terms are crucial to conveying respect and openness. Simultaneously, terms are meaningless because they tell you none of what you need to know to provide appropriate legal advice.

Such "terms" include:

- Identity labels
- Names
- Pronouns
- Experiences
- Personal history
- Body part names
- Nearly any part of a social experience

Definitions of terms are hotly contested, even within the community. Yet, there is a terms paradox: defining terms does not give us an understanding of who the person is or what their needs and goals are, but those labels can be very dear to the client's needs and sense of self. You should be careful to use the terms a client uses for themselves and resist the urge to impose any labels based on your perceptions. *Challenge yourself* today to look at someone on the street and remind yourself that *you do not know that person's gender* by looking at them.

How do I ask for my client's correct name and pronouns?

Attorney: "Hi, my name is CB Baga. I use they/them pronouns. Thanks for coming in today. What name and pronouns do you use?"

Client: "I'm Jamie, he/him."

Attorney: "It's nice to meet you, Jamie."

If you are looking for casual transitions or ways to connect with your client, do not connect by editorializing on information your client shares about their identity. It is common to want to comment on your personal progress or challenges using various pronouns. This redirects the conversation to your needs, in a situation where the client is vulnerable and probably nervous. Doing so signals to the client that their identity is unusual to you, and that you may not be a safe person with the client's communication needs (for example, the client's need to be called by the correct pronouns) and that you are focused on your own discomfort over the client's. Choose innocuous topics that you would discuss with any client.

Anti-Trans discrimination in action:

When appearing for an order for protection against a respondent who committed sexual assault on the petitioner, the petitioner's attorney asked the petitioner to use the wrong pronouns to refer to the respondent. The request was made to try to simplify the issues for the court. While it is natural to want to tell a clear story to the court, Model Professional Rule 3.3 Candor Toward the Tribunal says that "(a) A lawyer shall not knowingly: (1) make a false statement of fact or law to a tribunal[.]" While not every court will be familiar with all pronouns or situations, it is short-sighted to misrepresent in the name of simplification. The trans community is served by educating the court and the community at-large about the reality of our situations. By choosing to pass over the opportunity to educate the court, one merely delays the integration of our experiences in the jurisprudence and passes on the duty to the next party to appear.

How do I keep up with rapidly changing vocabulary?

Look up words you do not know and use them correctly to show your cultural competence when meeting with clients. As with any culture, the community has developed terminology like "dead name" (a name that was assigned to you that you no longer go by or is connected to a "dead" identity) and "AMAB/AFAB" (assigned male/female at birth). If you work with LGBTQ individuals, stay up to date on the terminology, the same way you would stay up to date on the factors that affect other aspects of your legal practice. If you do not work with the community regularly, do not make your client educate you—look up what you need to know to competently represent your client.

TIP NO. 2

Show empathy and awareness for your client's individual needs and create space for those needs to potentially be different than you have ever heard of before.

How do I ask for my client's unique concerns in accessing legal help?

Attorney: "I see from your intake form that you are here to talk about a housing issue today. Before we dive into that, is there any information you would like me to have on how I can best support you, any particular concerns you have, or something you want to discuss right away?"

Client: "I am really uncomfortable going to the courthouse. I do not want to have to go in front of a judge if I can help it."

Attorney: "Okay, thanks for sharing that. I can see how that would be really scary. It's hard to know how safe a particular individual in the court system will feel. We can definitely talk through all your options and help figure out what the best next steps are for you."

Resist the urge to reassure your client right away if they share a concern. The client needs to feel heard and validated in order to know that you will respect the boundaries that they share with you and that you understand their issues. You can give them more information later about what each option they have looks like, so they can think through their fears and concerns in context. When they raise the concern is not the best time to tell them that their concern doesn't concern you the same way.

How do I get enough information about my client's situation when I see how complicated gender and sex and transition can be?

Trans individuals make choices in three key areas about how they want to live their life—medical, legal, and social. These choices do not tell you anything about that person's actual identity or legal needs—and asking about them when they are not strictly relevant will put your client on high alert that you are not culturally competent. There are many different decisions in all these areas, such as how to dress, what names to use, and what medical interventions or changes are desired. Every choice is based on many complex factors and can even vary day to day or in different contexts based on the time, activities, comfort, safety, cost, and more. Do not assume anything—including who the client is out to, what names, pronouns, and presentation are used in what contexts, or how the client may feel about those choices.

Example 1

Attorney: "The legal form requires that I put the name that is on your legal identity documents here. Would you write it in for me?"

Example 2

Client: "I am a nonbinary transfeminine person, so it's really hard to get my landlord to take me seriously and I think she is just trying to evict me to get me out of her hair, but the whole place is falling apart."

Lawyer: "That must be so tough to deal with. At this point, what would be the best outcome for you? What would a win look like?"

Anti-Trans discrimination in action: A client who was transgender experienced employment discrimination. The client's lawyer wrote a letter to the employer to assert the client's rights. Only after the letter was written did the lawyer realize that the client was "stealth" to the employer (the client was not out as transgender and was not willing to be outed for the sake of legal advocacy). The lawyer had to re-write the letter to focus on "perceived sexual orientation." If the lawyer had realized that they needed to ask if the individual was comfortable being outed before the first draft of the letter, the risk of outing the client and the time spent would have been avoided.

TIP NO. 3**Overcome bias**

- Take it all in
- Spend time to list out the client's goals
- Evaluate alternative options
- Articulate your recommendations
- Identify the key facts supporting and steps required for each choice the client has

One psychological effect of perceiving a client to be gender diverse (or have another diverse identity) is a tendency to naturally assume that the demographic category is more significant than other aspects of the individual's background, behavior, or experience. This is called "master status thinking." Master status thinking is a type of implicit bias that focuses on the diverse identity as the primary issue and focus of the meeting instead of the issue that the client prioritizes. The conversation may follow the attorney's curiosity (trans history and experiences),

"Resist the urge to reassure your client right away if they share a concern. The client needs to feel heard and validated in order to know that you will respect the boundaries that they share with you and that you understand their issues."

invasive questions (inappropriate and irrelevant to the legal issue), redirecting the conversation (back to transness), and assumptions about causality/correlations (may be false or true, but should not be assumed).

How can I work against the natural tendency toward master status thinking?

In order to prevent this cognitive bias that all of us tend toward, try to set aside the fact that your client is diverse and listen to the many different factors that comprise that experience. There is tension between this and the fact that to understand your client, you need to see the systemic factors about that person's background, behavior, and experience that are directly linked to their status as a marginalized person. One effective way to balance this is to start by showing empathy and understanding of the experience as a marginalized person, and then move on to focus on your client's options for solving the problem based on their personal situation, taking into account all the factors of their situation, skills, and goals. Resist the urge to only give them the traditional legal framework, without considering whether that framework solves the problem that the individual experiences. Help the client through their decision on what the best next steps are.

What should a discussion with a client look like when they present with complex, interconnected identity and legal issues?

Wait to ask personal questions until they are necessary. Allow the client to direct the conversation when they are sharing their experience, and gradually focus the discussion to explore the client's goals and the legal parameters applicable to the situation. When you need to know personal questions to address the legal issue, consider prefacing your query by explaining the legal reason it is necessary, and ask while collecting the other specific details necessary for the legal analysis.

Anti-Trans discrimination in action: An order for protection petitioner called the police after being brutally beaten and locked outdoors in the winter by her female partner. The two individuals were both assigned-female-at-birth (AFAB) and nonbinary identifying. The police disregarded that there was real violence at play and belittled the couple, asking “if the two girls needed to take a few deep breaths” while one was bruising and bloody before them. As a result, the petitioner delayed seeking an order for protection for many months, fearful that the legal system would similarly overlook her situation.

Conclusion

Competent representation of trans and gender-diverse parties requires the legal community to learn inclusion skills and build trust with the community. Long-term harms continue to alienate LGBTQ people from the legal system. Only by affirmatively taking responsibility for gender inclusion will the legal community be able to keep up with the needs of the society it exists to serve.⁷



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CB Baga is an associate at Faegre Baker Daniels and the founder of the Trans Legal Clinic, which is a partnership between the Volunteer Lawyers Network and Family Tree Clinic. Their pro bono and community services work outside of the LGBTQ Clinic has included high profile tenant advocacy impact litigation, social security appeals, and orders for protection. Baga’s trial practice focuses on resolving complex commercial disputes by focusing on the advantage that can be gained for clients, with emphasis on trade secret and non-compete litigation, insurance, and complex contract disputes.

Notes

- ¹ A 2017 study by the University of Minnesota medical school found that 2.7 percent of study participants identified as TGNC—transgender or gender nonconforming. Eisenberg, Marla E., *Risk and Protective Factors in the Lives of Transgender/Gender Nonconforming Adolescents* [https://www.jahonline.org/article/S1054-139X\(17\)30207-0/fulltext](https://www.jahonline.org/article/S1054-139X(17)30207-0/fulltext); Kosciw, J. G., Greytak, E. A., Zongrone, A. D., Clark, C. M., & Truong, N. L. (2018). *The 2017 National School Climate Survey: The experiences of lesbian, gay, bisexual, transgender, and queer youth in our nation's schools*. New York: GLSEN. <https://www.glsen.org/sites/default/files/2019-10/GLSEN-2017-National-School-Climate-Survey-NSCS-Full-Report.pdf>. (reporting that over half of respondents to a survey to high school GSA and GLSTN network students identify as something other than noncisgender).
- ² Jessica A. Clarke. *They, Them, and Theirs*. 132 *Harvard L. Rev.* 894 (2019), <https://harvardlawreview.org/2019/01/they-them-and-theirs/>.
- ³ Ayako Miyashita, Amira Hasenbush & Brad Sears, The Williams Inst. Univ. of Cal. L.A. Sch. Of Law, *The Legal Needs of Transgender Women Living with HIV: Evaluating Access to Justice in Los Angeles* (2015), <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Legal-Needs-of-Transgender-Women-Living-with-HIV-November-2015.pdf> <https://williamsinstitute.law.ucla.edu/wp-content/uploads/Legal-Needs-of-Transgender-Women-Living-with-HIV-November-2015.pdf>.
- ⁴ A Research Agenda to Reduce System Involvement and Promote Positive Outcomes with LGBTQ Youth of Color Impacted by the Child Welfare and Juvenile Justice Systems. Los Angeles, CA: The Williams Institute. <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBTQ-Youth-of-Color-July-2019-3.pdf>.
- ⁵ 539 U.S. 558 (2003) (holding that criminalization of consensual, adult homosexual activity violates the constitutional right to privacy and the Fourteenth Amendment).
- ⁶ E.g., *Farmer v. Brennan*, 511 U.S. 825 (1994) (holding that the prison’s deliberate indifference to the harm faced by a black trans woman housed with men in prison violated her Eighth Amendment rights); Christy Malory, Amira Hasenbush, and Brad Sears, *Discrimination and Harassment by Law Enforcement Officers in the LGBT Community*, THE WILLIAMS INSTITUTE, (March 2015) <https://williamsinstitute.law.ucla.edu/wp-content/uploads/LGBT-Discrimination-and-Harassment-in-Law-Enforcement-March-2015.pdf>; Conron, K. J. & Wilson, B. D. M. (Eds.) (2019).
- ⁷ This article was created from materials from a CLE that the author, CB Baga, has co-presented at conferences and law firms around the legal community by the same title as this article. Mx. Baga would like to thank their collaborator, Beau RaRa of Mid-Minnesota Legal Aid for their contributions and work to further justice from the interpersonal to the systemic. We welcome feedback and input of any kind as we continue to develop this work.

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ALLYSHIP



Nicole Hittner

Nicole Hittner, a business and transactions partner at Ballard Spahr, is co-chair of Ballard Women, Ballard Spahr's business resource group for female attorneys. She also is the co-founder of Women in Private Equity, a networking group for women in the private equity industry.

The start of a new decade is a good time to assess whether the legal industry at large has made progress facilitating the professional success of women lawyers. Women, especially women of color, remain underrepresented in the legal field despite high graduation rates from law schools, and they are even less represented in the upper echelons of law firms, organizations, and the bench. Nicole Hittner, who co-chairs Ballard Women, Ballard Spahr's business resource group for women attorneys, shared her thoughts on women and the law.

According to the National Association of Women Lawyers, only 20 percent of AmLaw 200 equity partners are women. With over 50 percent of law graduates in the past 20 years identifying as women, how do you explain this disparity?

Nicole Hittner: I think, generally speaking, that programs like affinity groups for female lawyers have been helpful and are necessary, but, clearly, they haven't completely solved the issue of gender disparity. The question is, what could and should we be doing to move the ball forward? The legal industry needs to maintain its focus on effective means to attract, retain, and advance women. Mentorship and sponsorship programs, diversity training, implicit bias training, and expressions of formal commitment by firms to the advancement of women seem to be impactful. Ballard Spahr has had some success with those strategies—28 percent of our partners are women—but there's plenty more work to be done.

What are some barriers that women still face in the legal industry?

Hittner: Deborah Rhode of the Stanford Center on the Legal Profession has said that women in the legal profession face three main obstacles: sexual stereotypes, inflexible workplace structures, and inadequate access to mentoring. Most other studies and surveys seem to come up with some variation of the same themes. The good news is that overt sexism is less widespread than it once was, but the real progress will be made when implicit biases are recognized and addressed. We've also made progress in the legal industry with respect to flexibility through the use of technology. While

it is easier than ever to stay connected, the very real remaining issue is the perception, still held by some more seasoned attorneys, about the career commitment of their colleagues who are embracing a flexible (and sometimes physically remote) workstyle.

For me personally, access to mentoring is probably the biggest game changer. I believe it is critically important for women to have both formal and informal mentors who can help them navigate a trail that is still being blazed. Valuable mentorship can come from men or women, but successful careers are built on thoughtful guidance as much as determination.

What do legal employers need to do to attract, retain, and advance women?

Hittner: That's a complex question that we, as an industry, are still trying to answer. What I've seen in my own career is that a multifaceted approach has the most impact.

Through programming, mentoring, and sponsorship, we can work to improve the professional experience and bolster the trajectory of women lawyers. We can advance women into key participation and leadership roles, both inside and outside any given firm. No one tactic will work for everyone, so the goal has to be to offer multiple avenues for connection, growth, and success.

While no one has figured out the perfect solution yet, I believe if we keep genuinely committing to progress, we'll keep improving.

Some of the measures you mentioned sound harder to implement and measure, because they're "softer," so to speak.

Hittner: That's a fair observation, but there's evidence that these measures are moving the needle which makes them worth the investment. Ballard Spahr has put real money to work investing in women. For example, we have implemented a sponsorship program for all diverse lawyers and have expanded our paid parental leave to 16 full weeks for attorneys who are new parents. Tangible commitment like that has helped us do a little better than the national average. I also think it's worth noting that a few elements of what we just touched on are

sometimes considered facets of allyship. That's a concept relevant not only to the success of women attorneys at law firms but also to other diverse and traditionally underrepresented groups.

Broadly speaking, what does allyship mean, and why do you think it's useful?

Hittner: One definition that has been embraced is that it's the long-term process of building and maintaining trust, consistency, and accountability with individuals and groups that have been underrepresented. The successful practice of allyship results in people feeling valued, supported, and respected. Allyship, like sponsorship, is an ongoing process. It isn't a discrete task with a definitive end. If an organization like a law firm invests in that type of commitment, formerly underrepresented people, including women in the legal profession, will feel more supported and be more successful. The research has borne out that diversity of perspectives and backgrounds in the workplace leads to better business outcomes. Allyship helps us maintain that diversity.

How can attorneys and other professionals at law firms be good allies, then?

Hittner: It would be impossible to create a finite list of all the ways to be a good ally or sponsor, but as a starting point: be willing to listen thoughtfully; scrutinize your own implicit biases; and examine how you can support those around you. Additionally, it is key that those who do not experience the same bias speak up when they see bias play out in front of them. Men should speak up when they see discrimination against women and nonbinary individuals, white people should speak up when they see discrimination against people of color, and so on. This removes the burden from the disenfranchised person from constantly having to carry the torch on diversity issues. There are many ways, both formally and informally, that you can use your success to benefit others. Another element is making sure appropriate credit is given. When people feel equally valued, and an important part of the team, it's working. We all have to be willing to commit to ongoing improvement and commitment to the entire team.

No list of traits shown by good allies could ever be exhaustive, but these five general qualities are a step in the right direction.

Practice, Practice, Practice: Like law, allyship is a practice. No one can ever claim to be a perfect ally, or that the work of addressing injustice is ever complete. This approach emphasizes self-awareness, continuous improvement, and reflection.

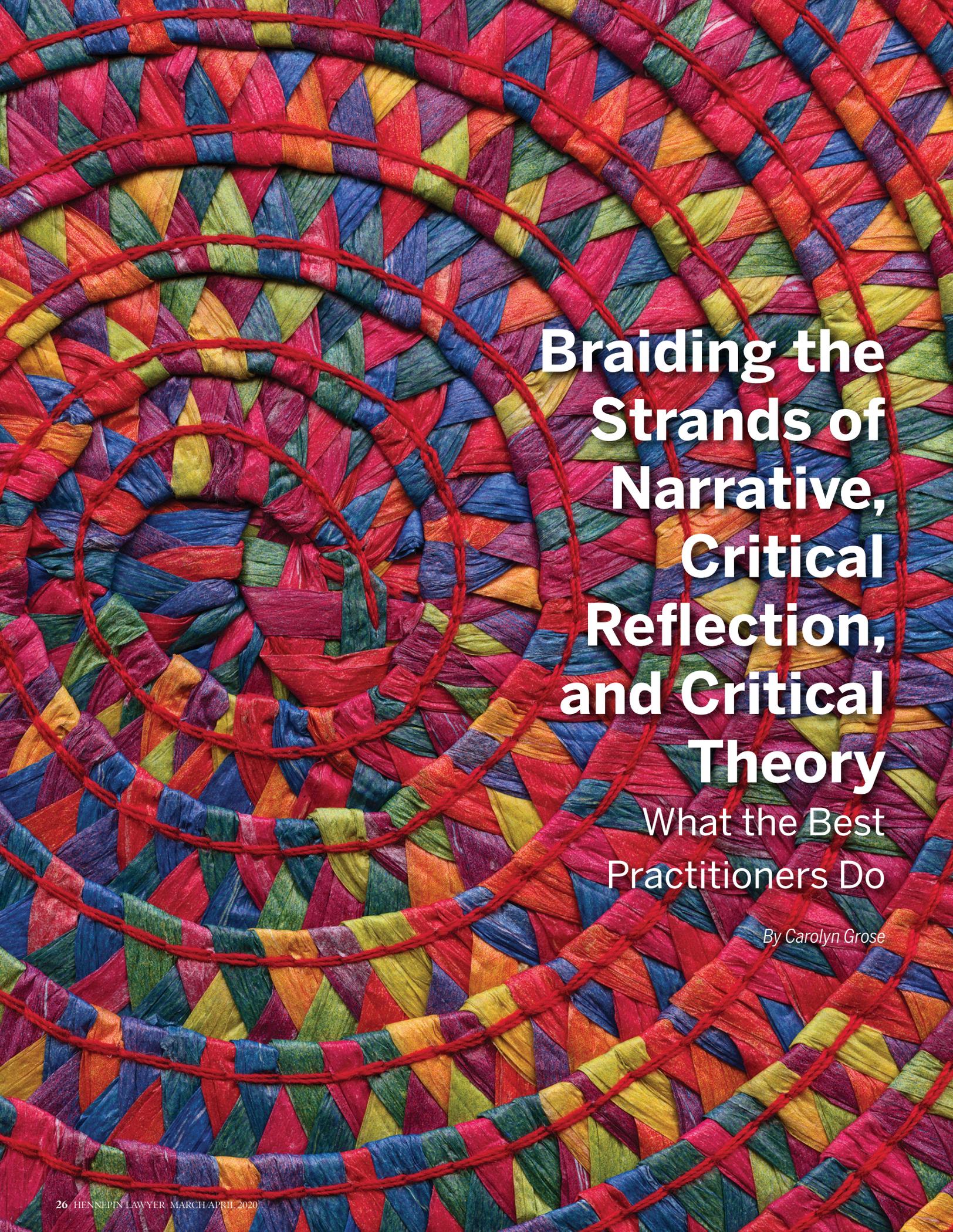
Believe Marginalized People: Whether it's ignoring a preferred pronoun or mentally discrediting an individualized story, failing to extend sincerity and respect to marginalized people perpetuates the treatment that led to their underrepresentation.

Confront Personal Biases: Before anyone can begin to address bias in others, that person must acknowledge and work to address biases he, she or they hold(s). No person is without bias of some kind.

Listen First: Allies must be willing to speak up, but it's important that they are willing and able to first listen to underrepresented voices.

Demonstrate Consistency: It's nice to help one person in one moment, but allyship means advocating for change constantly.

Sources: *Society for Human Resource Management, Gay and Lesbian Alliance Against Defamation, Ohio State University Advocates & Allies for Equity, Psychology Today*



Braiding the Strands of Narrative, Critical Reflection, and Critical Theory

What the Best
Practitioners Do

By Carolyn Grose

What makes a legal narrative effective, successful, persuasive? We have written elsewhere about the importance of engaging in the practice of critical reflection; and intentionally using narrative and its tools as essential to effective lawyering. What our work continues to seek to clarify, though, is how best those practices guide lawyers on the content of their narratives. How do theories of anti-subordination and agency, for example, or values of equality and justice best become integrated into a narrative? How do the tools of narrative theory and critical reflection guide lawyers on how to craft normative legal narratives? We consider this question in the following essay.¹

Narrative is a tool for gathering, organizing, analyzing, understanding, and conveying information, solving problems, and seeking to persuade. Narrative *construction* requires understanding and working with (or around) embedded norms, and persuasive narratives depend on filtering information through a normative lens. But the theory of narrative construction does not direct the narrative constructor as to what norms to include or through which lens to filter information.

The same is true of critical reflection. It teaches us to review, examine, and critique our narrative construction to evaluate whether it is representative of the client's situation and goals, but it does not provide the lens or perspective for the reflection that would guide the surfacing or challenging of embedded assumptions. As with narrative, it is void of normative direction.

Of course, lawyering itself is heavily normative, so clearly legal narratives are normative. But if the tools of narrative construction and critical reflection do not guide that normative content, what does?

We suggest that effective lawyering is guided by professionalism, including striving to do justice, client-centeredness, and critical theory (all of which we call “normative theory”). And we view the components of narrative theory, critical reflection, and normative theory as strands braided intentionally together into a unified double-helix spiral of effective lawyering. We imagine the two parallel strands that create the double helix as narrative theory and critical reflection. They form the contour of the representation, while the internal strands that braid the whole thing together are the normative

theories that drive the content of the lawyering. Altogether, we imagine a new version of the theory-[driven] practice spiral.²

Narrative Strand

The first strand of the braided spiral is narrative. Lawyers use narrative every day on behalf of their clients: to listen effectively in an interview, to construct a closing argument, to counsel a client, and to draft a contract. To use narrative intentionally requires an understanding of narrative components and construction to further a client's goals. Narrative theory tells us that a “story” is *what* happened, the events that occurred.³ And “narrative” is “*how* the story is transmitted.”⁴ Jerome Bruner describes the construction and conveying of narratives (often called storytelling) as “so instinctive, so intuitive, as to render an explanation of how we do it close to impossible: We stumble when we try to explain, to ourselves or to some dubious other, what makes something a story rather than, say, an argument or a recipe.”⁵ And yet, if we are to be effective lawyers, intentionally utilizing narrative construction to advocate or problem-solve on behalf of clients, we must be able to articulate and practice the process of narrative construction.

In *Lawyers, Clients & Narrative*, we identify and describe six elements of narrative: character (including traits); events (including setting and timeline); causation; normalization; master plot; and closure. The first two elements—character and events—are foundational to the narrative.⁶ Characters are “human-like . . . with agency, motivations, emotions, and beliefs.”⁷ They cause “events” to happen, and events are the action or plot of the narrative.⁸

The next four elements—causation, normalization, master plot and closure—further the narrative's rhetorical, persuasion, and communication goals.⁹ In order to be believable, compelling, and relatable, a narrative must explain the cause and effect of events or characters' motivations, for example. It must be *internally* consistent from beginning to end and *externally* consistent with how the world works (normalization). It must provide moral or value-laden wind that propels the narrative, containing stories consistent with values, fears, and wishes that resonate with and move the audience (master plots). And, finally, the narrative must lead to closure, where the character seeks and finds resolution to a problem that disrupted the character's normal life or status quo.¹⁰

Lawyers, along with clients, provide content to each of these distinct and identifiable elements through choices made—consciously or not—during the course of narrative construction and revision. Because all stories have these elements, when lawyers construct narratives with their clients, they need to make intentional choices about how to construct each element. Which characters will be included? Which events? In what order? What master plots will they focus on and which will they need to anticipate from others and argue against?

Narrative theory leads to an understanding that we, as lawyers with clients, are constructors of narratives, and, as such, we need to make intentional choices about that construction. In order to figure out what narrative to tell and how to tell it, the lawyer with her client weighs three substantive factors, the same factors that make up the theory of the case—the law, the facts and the client's goals. In addition, of course, the lawyer with her client considers contextual factors, such as the audience, the forum, availability of resources, time constraints, personality of the client, and potential supporting or detracting characters in the narrative.

We are not suggesting that lawyers do not already use narrative elements to construct their stories. On the contrary: this is how stories are constructed, by lawyers and nonlawyers alike. All narratives contain these elements. Being guided by narrative theory, then, simply means harnessing what we are already doing in a systematic and intentional way. If, as we are listening to our client, something does not make sense, or we find ourselves wondering about the absence or presence of a particular character, or we imagine how we might feel in a similar situation, a narrative approach suggests that we recognize those reactions as important clues to help guide our ongoing pursuit of the client's narrative; and that we use these clues to work with the client to construct a narrative that will engage the decisionmaker's curiosity and compassion without triggering his disbelief or dismissal.

It is not news to suggest that lawyers and clients create narratives in the context of addressing legal issues. Let's pay attention to what that means, though. Each one of the narratives consists of distinct and identifiable elements; and each one of these elements is the product of choices made—consciously or not—by the narrative's constructors. Thus, when we use narrative intentionally, we become better practitioners.

Critical Reflection

Which brings us to the second strand in our braided spiral: critical reflection. We use the term “critical reflection” to describe the “method that guides our extraction of theory from practice, and the application of practice to theory.”¹¹ Critical reflection means asking questions and looking for answers, specifically, but not exclusively, in relation to power. By asking the “reporter” questions of Who, What, Where, When, Why, How, we surface assumptions we may hold about ourselves, our clients, our colleagues, etc. When we engage in that questioning routinely and regularly, we begin to see patterns and extract theories from the specific practices we engage in. Thus, our practical lawyering is both theory-driven and theory-building.

Through critical reflection, “the lawyer self-consciously situates herself within the particular context in which she is operating. Specifically, she recognizes that she, as a lawyer, is someone with (relative) power in the legal system.”¹² And by interrogating the context of a given situation, the lawyer is also able to situate her own power relative to the “stock” characters involved in the legal system—for example, the judges, the

clerks, the bailiffs, the jurors, the defendants, the plaintiffs, the prosecutors, the defense attorneys, government bureaucrats, legislators, media, and members of the public. Moreover, she is able to take that contextual awareness of her ability—or lack of ability—to move freely among these characters into the specific set of facts and concerns presented by her client. In so doing, she can more accurately predict success or failure of particular strategies, ideas, theories, and, therefore, more effectively counsel and represent her client.

As she is situating herself and appraising the context, critical reflection helps her surface what we have come to call her default “goggles.” These goggles are her reflexive critical worldview, through which she filters information and constructs narratives. Critical reflection then provides the opportunity for her to change her goggles to make room for other intentional choices about perspectives and other worldviews to aid her narrative construction. Narrative theory and critical reflection reinforce each other in a double-helix spiral. They operate parallel to one another, bound together by the normative theory strands described in the next section. Where narrative theory describes the surface elements of a story—the character, the

events, the causal connection, the normalization, the master plot, and the closure—critical reflection interrogates each of those elements to plumb its depths.

Consider the task of identifying potential witnesses for your client’s case. The narrative element of character would guide you to gather information about and from any significant people in your client’s life. Your client tells you to talk to members of his family, a couple of his employees, and another two or three people. Great—there’s your list. But wait—critical reflection guides us to ask WHY he has identified these people. His family, his employees, okay those make sense—but what about the other two or three people? Who are they? Why has he identified them as significant? Does understanding more about their connection to him lead to greater insight into the case, and/or other potential witnesses? So, on a practical, specific level, interrogating this client’s choice to identify a particular person as significant might lead to concrete action and results specific to the case. As we continue to practice asking “Why” and the other questions, though, we might come to learn something about the kinds of people our clients identify as “significant.” We might come to understand in a deeper way the different reasons that someone might identify a particular character that way. And based on this extraction of theory from practice, we might adapt our interview topics, questions, and language accordingly.

Normative Theory

The third strand in the braided spiral is normative theories. Narrative theory identifies choices that a storyteller makes about how to infuse the structural elements of narrative with content. The practice of critical reflection invites us to ask “why,” and to interrogate “what is” by using, among other tools, the narrative elements. But neither critical reflection nor narrative theory tells us HOW to make those choices; they identify and analyze the elements of a story, but they do not tell us what the story IS.

We all know—from our experience of the world and our own self-reflection—that narratives are inherently normative. Whether we mean to or not, we tell stories full of moral codes, value judgments, and/or assumptions about people and the world. And this is baked into the elemental structure of narrative. The master plot element of narrative, while not dictating which norms be included, requires the constructor to include normative-filled content. Master plots are ‘stories that we tell over and over in myriad forms and that connect vitally with our deepest values, wishes, and fears.’¹³ In order for a master plot to be effective, therefore, it *must* be based

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on a particular community's particular values, wishes, and concerns. It is up to the narrative constructor, therefore, to decide whether and what kind of master plot to include.

The client provides the most important guidance and instruction to lawyers in constructing legal narratives as the narratives are the retelling of the client's life and contain her perspective and goals. Thus, an important normative theory that guides clinical teachers and practitioners is client-centered lawyering.¹⁴

Another source for the normative strand to be braided into legal narratives is professionalism and justice. Without too much thought, any student lawyer could recite that her professional obligation includes a duty to her client of confidentiality and zealous advocacy and a duty to the tribunal of candor. Those are contained in the Rules of Professional Conduct for lawyers. In addition to these basics, though, we have come to understand that *being* a lawyer involves some commitment to justice. Indeed, the MacCrate Report identified as a "value" that lawyers should possess "striving to promote justice, fairness and morality."¹⁵

But what does that mean in practice to construct your narrative through a lens of justice and professionalism? While similar to client-centered lawyering, using a justice lens, explicitly, requires the lawyer to think *systemically* about how a particular client's story fits into our obligations to strive toward justice, fairness, and morality. When viewing our professional obligations through that lens, lawyers consider each client's story as both unique and particular, AND part of a bigger system where power operates unequally, often without fairness and morality. With that understanding, the lawyer is better able to engage in meaningful dialogue with her client about her particular context, and also the ways in which that context is informed by the unequal operation of power. The resulting narrative is likely to be richer and more effective as a result.

Finally, normative narrative construction is guided by critical theories. By "critical theories," in general, we mean theories of thought and argument that critique current systems, structures, and practices through various lenses that reflect relationships around power and access (or lack thereof) to it. In an early chapter of *Lawyers, Clients & Narrative*, we remind our readers that

narrative theory is not the only technique lawyers need to master in order to be competent client-centered professionals devoted to justice . . . When lawyers are guided by the normative theories of

client-centeredness and a commitment to professionalism and justice . . . they are more likely to develop contextually rich narratives likely to achieve their clients' complex and nuanced goals. Thus any practice of narrative theory must be accompanied by . . . normative theories and practices.¹⁶

As narrative theory guides us, human beings constantly seek to "normalize" the stories of those around us. We all pass stories through our own pre-existing screen of "knowledge" about how people act. Because critical theory teaches us that the stories of those outside the dominant discourse often conflict with that pre-existing "knowledge," a tension arises between what the insiders "know" about the outsiders and what the outsiders' stories are describing. Confronted with this tension, insiders often choose not to question their own version of reality (what they "know" is "true"), but they choose instead to recast the outsiders' story into terms and language that make it consistent with the insiders' understanding of reality.

In order to be effective client-centered lawyers, we need to be consciously and vigilantly aware of what we bring to our representation of clients and what the law is presenting as expected norms, and seek guidance from other sources of perspective outside of ourselves. We need to attend to the unstated values that underlie legal norms and rules, as well as our own personal norms.

We need to make explicit to ourselves the lenses we use to see the world, and how those lenses affect how we see our clients. If we don't engage in critical reflection, we risk letting our own values and judgment guide our lawyering, and we fail to recognize our own reactions to a client's story as just that: our own reactions. Through critical reflection we can attend to the need to braid in client-centered lawyering, justice and professionalism, and critical theory to better our narrative construction with our clients.

The Whole Braided Spiral

So here is the whole braided spiral: Critical reflection and narrative theory work together to guide us to ask questions and broaden our perspectives in gathering information and constructing cases and projects. By intentionally adding in the strand of normative theory, made up of client-centeredness, justice and professionalism, and critical theory, we create a spiral of lawyering focused on the client, aware of power dynamics and attentive to structural forces, designed to achieve the client's goals, consistent with making the world a more just place.

Braiding narrative, critical reflection, and normative theory is how we suggest lawyers with their clients create normative narratives that further their clients' goals, and strive toward justice. This description of the braided, double-helix spiral reflects our understanding of what good lawyers already DO, not what they could or should do. Rather than a prescription, therefore, these thoughts can better be described as our observations—on an increasingly micro level—of the practice of effective lawyering. We endeavor always to use what we observe about the practice of law as tools to improve our theories of pedagogy and lawyering.



Notes

¹ This is an excerpted version of an article, co-authored by Carolyn Grose and Margaret E. Johnson, that appeared in 26 *Clinical Law Review* 203 (2019).

² See, generally, Phyllis Goldfarb, *A Theory-Practice Spiral: The Ethics of Feminism and Clinical Education*, 75 *MINN. L. REV.* 1599 (1991).

³ Grose and Johnson, *Lawyers, Clients & Narrative* (Carolina Academic Press 2017) at 4.

³ Grose and Johnson, *Lawyers, Clients & Narrative* (Carolina Academic Press 2017) at 4.

⁴ Grose and Johnson at 2.

⁵ *Id.* at 27 (citing JEROME BRUNER, *MAKING STORIES: LAW, LITERATURE, LIFE* 34 (2003)).

⁶ *Id.* at 5.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 14.

¹⁰ *Id.* at 14–20.

¹¹ *Id.* at 37.

¹² *Id.*

¹³ Grose and Johnson, *supra* note 12 at 17.

¹⁴ *Id.* at 30–36.

¹⁵ American Bar Association Section Of Legal Education And Admissions To The Bar, *Legal Education And Professional Development - An Educational Continuum* (Report of the Task Force on Law Schools and the Profession: Narrowing the Gap) (1992) (commonly known as the "MacCrate Report").

¹⁶ Grose and Johnson, *supra* note 12 at 30.



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A national leader in pedagogy and narrative theory, Carolyn Grose was a tenured professor at William Mitchell College of Law before becoming a member of Mitchell Hamline's founding faculty. She has developed and taught courses in Family Law, Trusts & Estates, Critical Theory, Trial Skills & Appellate Advocacy. Her most recent publication is *Lawyers, Clients & Narrative* (Carolina Academic Press 2017).

E-sign on the Dotted Line

by Eric T. Cooperstein

I love e-filing and service. As a lawyer with a paperless office, I love not having to print documents. As a lawyer without administrative staff, I love not having to copy and serve documents. Cover letters, affidavits of service, and un-stapling and scanning documents received from other parties have become the exception rather than the rule. All that non-billable admin time has been drastically reduced.

From what I can tell, most lawyers love e-filing as well (albeit perhaps with less passion than I have). But as I have watched lawyers cross this digital threshold, I have become concerned about what many have left behind: no one seems to actually sign documents anymore. The days of a signature confirming, if not attesting, that a lawyer stands behind the work product appear to be gone. Instead, most filed documents, from letters to pleadings to affidavits, are marked with a simple “/s/.” Back when I had hair, a document bearing an /s/ indicated that it was a copy of an original document that had an ink signature on it. Now, of course, “ink” is something that adorns your flesh.

The Minnesota Rules of Civil Procedure appear to permit this practice. Rule 11.01 states that every “pleading, written motion, and other similar document” must be signed by an attorney or party but “The filing or submitting of a document using an E-Filing System established by rule of court constitutes certification of compliance with the signature requirements of the applicable court rules.” The filing will be rejected if the signature block is blank (which I have learned from experience) but a simple /s/ passes the test. The rule doesn’t say anything about clients and third parties signing affidavits. More on that in a minute.

As I look over lawyers’ filings, I see a lot of sloppy practices. For starters, most lawyers do not e-file documents themselves – their non-lawyer assistants do it. Oftentimes it is the assistant, not the lawyer, that types the /s/ in the signature block in the Word document, converts it to PDF, and then files it. Hopefully, there is some written instruction, such as an e-mail, authorizing the staff member to “sign” and file the document, rather than just an oral instruction. Whereas in

the past it would have been improper for a non-lawyer to sign a lawyer’s name to a pleading, now it is routine. There is no longer any certainty that a lawyer was the last person to review and edit a document before it was filed.

Remarkably, the same process seems to be employed for affidavits. Before, when affidavits had to be notarized, the affiant needed to ink the signature while a notary looked on. Now that Minn. Stat. §358.116 permits affidavits to be signed under penalty of perjury without a notary, the same laxity in using /s/ in place of a signature has migrated to affidavits. Diligent lawyers obtain e-mail confirmation from a witness before /s/igning and filing an affidavit but it sends a chill through my ethics DNA. I have had two OLPR investigations in the past year in which either a witness later denied approving an affidavit for filing that was /s/igned by the lawyer or the accuracy of an affidavit was challenged later.

To avoid second-guessing and ethics complaints, lawyers should up their game when it comes to e-signing and filing documents. There are many solutions, all based on the basic principle, which I first heard a dozen years ago from Sam Glover, the founder and editor-in-chief of Lawyerist.com, that a Word document is not a final document. A PDF is a final document.

1. Sign and scan. This is the simplest: print the signature page, sign it, scan the page, and append it to the PDF. It is your unique signature and you and the world know that you reviewed and signed off on that document. No, you cannot pre-sign the signature page before the document is done.

2. Create a font with your signature. A very simple digital solution that avoids printing and scanning is to create a font with your signature in it at www.fontifier.com. You create and upload your own handwriting, then download the completed font to your computer. The font only works on computers to which it has been downloaded. You can insert your unique signature into a Word document and save it as a PDF. Anyone else who gets the Word document cannot see or copy your signature and it cannot be copied easily from the PDF. Cost: \$9.

3. Certified Signature. The latest versions of Adobe Acrobat allow you to “certify” documents, with or without a visible signature (you can import a signature to Acrobat by scanning a page with your signature on it and uploading the image). This is the gold standard. Ordinary PDFs can be edited (you knew that, right?). Once a PDF is certified, however, it cannot be altered without losing the signature. This is what district court judges use to sign orders. State district and appellate courts and the federal court have all accepted my certified signed documents.

4. E-Sign Apps. For witnesses signing affidavits, you could have them print, sign, and scan their signatures, or even print, sign, and take a picture of the page with their phones. Even more cumbersome for them than it is for you. E-sign apps allow a designated signatory to sign on their computer or phone. The app creates a log of when the document was signed; some include the IP address of the computer that was used to sign. Adobe Sign locks the document upon signing, just like the Acrobat certification function. Some other apps I have tried allow for remote signing but the resulting PDF can still be edited, which seems to me to defeat the purpose. Adobe Sign is included in the Acrobat DC subscription product; Adobe also sells it as a stand-alone product.

With technology, we can have the best of both worlds: e-filing and signatures that really mean something.



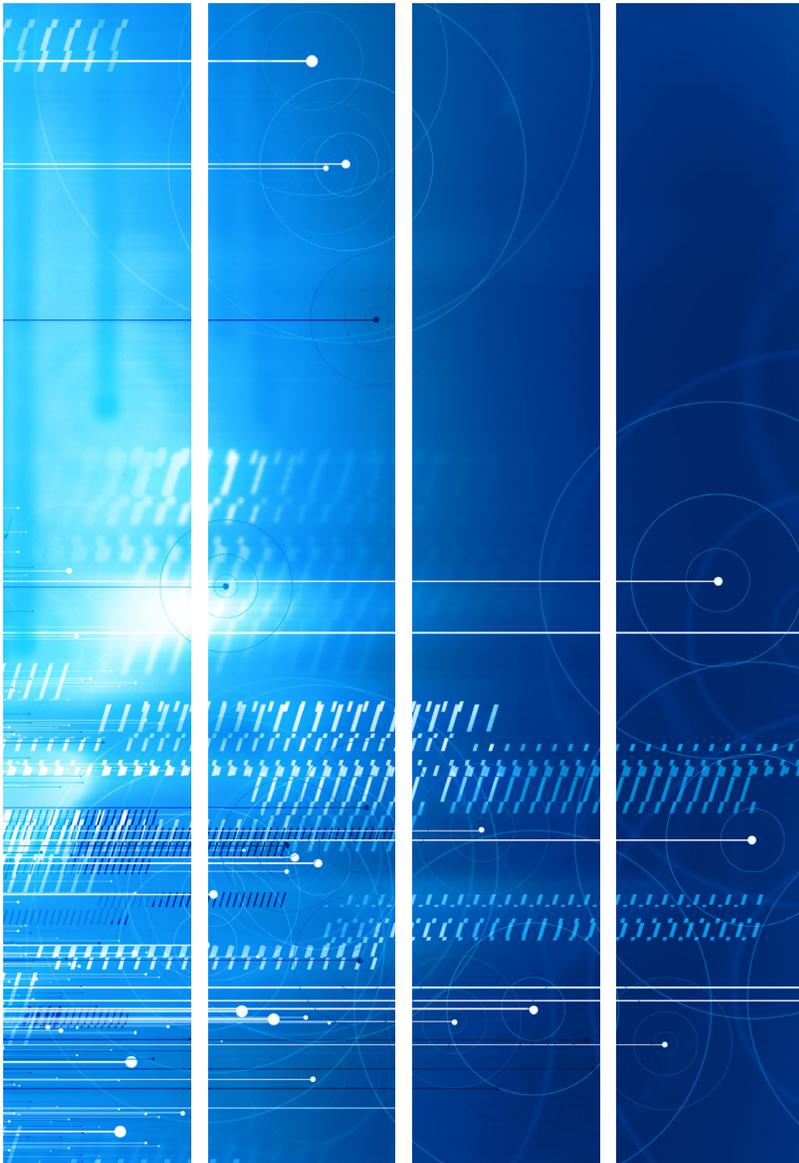
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Eric T. Cooperstein, the “Ethics Maven,” defends lawyers and judges against ethics complaints, provides lawyers with advice and expert opinions, and represents lawyers in fee disputes and law firm break-ups.



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Judge Rachna B. Sullivan

New to the Bench

By Dorothy Summers

Judge Rachna B. Sullivan is a firm believer in hard work, being prepared, and the importance of giving back.

At the age of 17, Sullivan embarked on a flight from New Delhi, India to the United States to pursue her studies. Born into a supportive family who believed in and encouraged her to follow her dreams, Sullivan left India to study in the United States during a time when not many women were afforded opportunities for education.

At Sullivan's investiture, she spoke about the sacrifices her family made in order for her to achieve success. Sullivan is the first person on her side of the family to attend law school, the first to become a lawyer, and the first Indian-American judge to serve on the Hennepin County District Court bench. "Many people in my life made sacrifices for me to be the first."

After graduating from Pace University in New York City, Sullivan attended the University of Minnesota Law School. The decision to attend law school was not originally part of her plans, since Sullivan comes from a family of accountants. Upon graduating from law school, Sullivan worked as an assistant district attorney in Brooklyn. There, she was able to experience first-hand a high volume of criminal cases and a disparate number of people of color in the criminal justice system.

Sullivan moved to Minnesota and clerked for the Hon. James M. Rosenbaum, where she continued

to cultivate a love for the courtroom and litigation. With a smile on her face, she recalled feeling embraced by the legal community as she continued to expand her connections as an attorney. Once she completed her clerkship, she continued to practice law for two decades as a partner and co-chair of the Federal Practice Group at Rider Bennett, and a shareholder at Fredrikson & Bryon.

She brings a variety of skills and experiences that will serve her well as a judge. Currently on a criminal law assignment, Sullivan is enjoying her new role. She points to her organizational, analytical, and critical thinking skills as assets on the bench. "There are always different facts, requiring different solutions for every case. I strive to bring a level of passion and hopefully move the dial to ensure equal justice under the law."

Sullivan beamed as she talked about the importance of diversity on the bench. "It is imperative when a defendant walks into the courtroom, they see themselves reflected in the judiciary." She also shared her desire to see more lawyers volunteer their time to individuals who need adequate representation but cannot afford to hire an attorney. "Pro bono representation is vital for our justice system." She provided legal services to several clients with limited means during her time at Fredrikson & Byron through their pro bono program.

Sullivan wants her courtroom to be a place where every litigant leaves the courtroom

knowing that win or lose, they appeared before a judge who cared, listened, was patient, and followed the law.

While her commitment to equal justice and giving back can be easily traced back to her familial upbringing, Sullivan's leadership and community involvement demonstrate she also practices what she preaches. Whether she is volunteering to provide food to families in need or serving as a leader in the community through various organizations, Sullivan is grounded and guided by always remembering to give back more than she's received. "I want to be remembered as a judge who cares, listens, is patient, kind, and works hard to understand all who appear before me."



Dorothy Summers

Ms. Summers graduated from the University of St. Thomas School of Law in 2018. After graduation she worked at the Legal Rights Center where she facilitated restorative justice Family Group Conferences for youth referred for school discipline, truancy, juvenile diversion, family engagement, and academic support. Born and raised in the Bronx, New York, Ms. Summers taught students with special needs for three years before moving to Minnesota to attend law school. Currently, she is a law clerk to the Hon. William H. Koch in Hennepin County District Court.



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Bar Memorial 2020

The Hennepin County Bar Memorial is a time-honored tradition, over 100 years, and on May 1 we will again honor and celebrate the lawyers and judges who passed away last year.

Chief Judge Ivy S. Bernhardson will call to order this special session of the Hennepin County District Court. Judge Bernhardson will welcome family members, colleagues, and friends of the members of our profession whose good deeds and service we recall that day, and she will introduce justices and judges from Minnesota's state and federal courts who are in attendance. Collaboration between the Hennepin County Bar Association and the Hennepin County District Court will forever be the key to a successful Bar Memorial. We are grateful for this commitment and good will.

Volunteers on the Bar Memorial Committee work hard each year to help ensure that we remember the professional and personal achievements of our colleagues to be memorialized. Their uniquely positive contributions to the law and greater community make us a better profession. Every year family and friends leave the Bar Memorial feeling moved by these tributes.

The HCBA Bar Memorial Committee requests your assistance as we plan for the 2021 Bar Memorial. Please let us know of Hennepin County lawyers and judges who pass away during 2020. Also, if you are interested in serving on the Bar Memorial Committee, we welcome your participation. For more information, contact HCBA Events Director Sheila Johnson at sjohnson@mnbars.org or 612-752-6615.

The past informs the present. The present informs the future. Today, we remember our colleagues who have gone before us. Tomorrow, we apply the lessons learned.

Kathleen M. Murphy
Chair, Bar Memorial Committee

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* Additional individuals may be added. Please see the May issue for a complete list of memorials.

Member News

Submit your HCBA member news to thl@hcba.org for consideration.



Wunderlich-Malec is pleased to welcome **Sarah Roeder** as corporate counsel.



Michael M. Skram has been named a managing shareholder at O'Meara, Leer, Wagner & Kohl.



Moss & Barnett announced that **Aaron P. Minster** has joined the litigation team.



Amanda M. Mills has joined Fredrikson & Byron as an associate. **Mark D. Salsbury** has joined as a shareholder.

Taft welcomes new attorney **Michael Warren** to the firm's Minneapolis office.



Brent Tunis has joined Lommen Abdo.



Arthur, Chapman, Kettering, Smetak & Pikala has announced the election of **Corey S. Bronczyk** and **Beth A. Prouty** as shareholders.



Lisa Spencer has been named president of Henson Efron.

Alexandra Reynolds has joined Atticus Family Law.



Best & Flanagan is pleased to announce the election of **Libby Davydov** and **David Josylin** as partners.



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Just. James Gilbert
(952) 767-0167



Hon. Sam Hanson
(612) 977-8525



Martin Ho
(612) 332-1622



Steve Kirsch
(612) 312-6519



Roger Kramer
(651) 789-2923



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(612) 791-2218



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(612) 349-5224



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(651) 379-0413



Peter Pustorino
(952) 925-3001



Paul J. Rocheford
(612) 375-5937



James G. Ryan
(612) 338-3872



Doug Shrewsbury
(952) 428-9840

Check Available Dates Calendars at www.MinnesotaMediators.org

NADN is an invite-only professional association of over 1000 top litigator-rated mediators & arbitrators throughout the US and is proud to partner with the national defense and trial bar associations. For more info, visit www.nadn.org/about



HCBA Notice of Election

HCBA Notice of Election

To: Members of the HCBA
From: Landon Ascheman, Secretary

Application/Deadline

For an application, position descriptions, and the Nominating Committee process, please visit hcba.org. Completed applications, including a resume, should be submitted to:

HCBA Nominating Committee
Attention: Ariana Guerra
Hennepin County Bar Association
600 Nicollet Mall, Suite 380
Minneapolis, MN 55402

Or email: aguerra@mnbars.org

Applications are due by **Friday, April 3, 2020**.
Applicant interviews will be scheduled in late April.

Nominating Committee

The Nominating Committee shall nominate at least one nominee per officer or other election. No applicant shall communicate with the committee or any member of the committee about a matter relating to the committee's HCBA Notice of Election business, except through the chief executive officer. HCBA bylaws are available at www.hcba.org.

The Nominating Committee is chaired by Jeff Baill, President of the HCBA. Other committee members are: Nicholas Ryan, Kendra Brodin, Traci Bransford, Dan Gilchrist, Esther Agbaje, Aaron Frederickson, Esteban Rivera, Brandon Vaughn, Landon Ascheman, Hon. Ann O'Reilly, and Norm Pentelovitch.

Additional Opportunities

Besides the HCBA's formal elections, additional opportunities for service through committees and sections during the 2020-21 bar year are available by presidential appointment or section elections. If you would like to be considered for a leadership position, contact President-Elect Esteban Rivera at rivera.esteban@gmail.com or HCBA CEO Cheryl Dalby at cdalby@mnbars.org.

HCBA OFFICES FOR 2020-21

Elections

Officers and Directors

HCBA Secretary
Track position, serves as president 2023-24
At-Large Director
At-Large Finance & Planning

Positions Open

One
Three
Two

Term

One-year
Three-years
Two-years

Other Representatives

MSBA Secretary
Track position, serves as MSBA president 2023-24
MSBA Assembly Delegates
MSBA Assembly Alternates
ABA Delegate
HCBA Representatives
to MSBA Council

One
Eighteen
Eighteen
One
Two

One-year
One-year
One-year
Two-years
Three-years

Other Boards

Central Minnesota Legal Services
Hennepin County Law Library

One
One

Two-years
Four-years

Other Leadership Opportunities

Those interested in service and leadership opportunities should also be aware of nominations / elections through the MSBA to positions on the following Boards:

Client Security Board (one position), State Board of Continuing Legal Education (one position), Central Minnesota Legal Services (two positions), Legal Services Advisory Committee (2 positions) and MSBA/ABA delegates (four positions).

Interested members must submit a Qualifications & Interest Statement to the MSBA office by **Friday, March 27, 2020**. This form is available on the MSBA website or through Athena Hollins at ahollins@mnbars.org



HCBF Notice of Election

HCBF Notice of Election

To: Members of the HCBA
From: Matt Ralph, Secretary

The Hennepin County Bar Foundation (HCBF) is seeking applications for open seats on its Board of Directors and for the position of treasurer.

The mission of the HCBF is to “promote equal access to justice for the people of Hennepin County.” The HCBF fulfills this mission through supporting partner organizations and awarding grants to organizations that provide legal services to individuals of limited resources, educate the public about the legal system, and contribute to the improvement of the legal system and administration of justice.

The HCBF Nominating Committee looks for board members from the local legal community who are enthusiastic about increasing access to justice initiatives through the foundation’s fundraising, grantmaking, and community engagement.

Application/Deadline

To be eligible to serve on the HCBF Board of Directors, individuals must be members in good standing of the Hennepin County Bar Association. Members of the HCBF board are elected to three-year terms and are eligible to serve two consecutive terms.

The position of treasurer of the HCBF, while a one-year term that is not technically “tracked”, tends to be held by an individual who is interested in moving up to the leadership positions of secretary, vice president, and president.

For an application and position description, please visit hcba.org. Completed applications, including a resume, should be submitted by email to Amanda Idinge at aidinge@mnbars.org. Applications are due by **Friday, April 24, 2020**. Applicant interviews will be scheduled in May.

Applications are available at www.hcba.org or by calling 612-752-6600.

Election

The HCBF Nominating Committee reports its nominations for each position to the HCBF board. Class A members (HCBA officers) appoint board members, while the full board elects officers at their annual meeting.



Thank You Sponsors





The Founding Fellows were introduced in the March/April 2019 issue of *Hennepin Lawyer*.

“We are really pleased that so many members of our legal community have stepped up to participate in the Fellows program. This is a great way to be involved with other like-minded attorneys who care about access to justice.”

– Vince Louwagie
HCBF Past President & Founding Fellow



2020 FELLOWS

MAKING A DIFFERENCE IN HENNEPIN COUNTY

In 2018, the HCBF board of directors launched the Fellows Program. Designed to significantly increase contributions to the foundation and amplify its impact in the community, the Fellows Program has since welcomed 84 attorneys who make a real difference in promoting access to justice in Hennepin County. Nominated by their peers on the HCBF board, Fellows commit to donating \$1,500 over five years, providing the resources needed to make serious progress in addressing the justice gap in our community. A group of 18 Founding Fellows was also recruited, who will each contribute \$5,000 over five years and join the ranks of the foundation's major donors. We thank the following supporters for their significant commitment.

FOUNDING FELLOWS

Brooke Anthony
Hon. Regina Chu
Hon. Martha Holton Dimick
Paul Floyd
Marlene S. Garvis
Roy S. Ginsburg

Hon. Bill Koch
Thaddeus R. Lightfoot
Vince Louwagie
Katherine L. MacKinnon
Andrew H. Mohring
Adine S. Momoh

William Z. Pentelovitch
Steven M. Pincus
F. Matthew Ralph
Hon. Mary Vasaly
Brandon Vaughn
Hon. Sarah West

Susan A. Aase
Alecia Anderson
Creig Andreassen
Landon J. Ascheman
Jeff Baill
Lisa Lamm Bachmann
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Danielle Bird
Michael P. Boulette
Andrew Brantingham
Vija Brookshire
Elizabeth Sorenson Brotten
Arthur G. Boylan
Kate Bruce
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Michael H. Fink
Terrence Fleming
Tom Fraser

Hon. Theodora Gaïtas
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Jeffrey Hedlund
Valerie Herring
Kevin Hickey
Kevin D. Hofman
Susan M. Holden
Melissa Houghtaling
Kirstin D. Kanski
Phil Kaplan
Ben D. Kappelman
Steven C. Kerbaugh
Mary Knoblauch
Jason Lien
Bruce Little
Jim Long
Charlie Maier
Ryan McCarthy
Laurie Miller
Michael M. Miller
Kati Mohammad-Zadeh
Christopher Morris
Blake R. Nelson
Tom Nelson

Elliot Olsen
Cory D. Olson
Jennifer Olson
Clark D. Opdahl
Lee M. Orwig
Steven Phillips
Hon. David Piper
Mardell D. Presler
Richard A. Primuth
Hon. Jay Quam
Roshan Rajkumar
Esteban A. Rivera
Brent Routman
Mike Rowe
Eric Ruzicka
Vanessa L. Rybicka
Gregory A. Sebald
Kathleen Sheehy
Eric R. Sherman
Hon. Kristin Siegesmund
Sandy Smalley-Fleming
Jon Strauss
Jayne Sykora
Craig W. Trepanier
Hon. Edward Wahl
William Wassweiler
Rob Williams
Hon. Angela Willms

Bold = New Fellow

Events and Meetings

Visit www.hcba.org for more information

MARCH 5

HCBF Bar Benefit
Lumber Exchange
Event Center
5:00 – 7:30 p.m.

MARCH 6

Well-Being CLE
The Path to Lawyer Well-Being
and the Legal Profession-
Breaking the Stigma of
Asking for Help
12:00 – 1:00 p.m.

MARCH 19

Corporate Counsel CLE
Advanced Attorney-Client
Privilege for In-House Counsel
12:00 – 1:00 p.m.

MARCH 25

Eminent Domain CLE
Perfecting Appellate
Jurisdiction of Relocation
Benefit Appeals Under
MN Statute 117.52 and
MN Statute 14.63
12:00 – 1:00 p.m.



**LEADERS IMPACTING
THE NONPROFIT
COMMUNITIES**

COURSE DATES

March 12
March 26
April 2
April 23



**HCBA ANNUAL MEETING
& AWARDS LUNCHEON**

May 28
Radisson Blu
12:00 – 1:30 p.m.

You helped more than
19,000
Minnesotans in need
last year!

Thank you for volunteering to
#MakeProBonoHappen.



10 QUESTIONS

with Lucy Clark Dougherty

Senior VP and General Counsel
of Polaris Industries



1 What's your elevator speech?

A colleague recently described me as a business person with legal expertise—a high compliment in my eyes. The role of a general counsel is to meld the legal perspective with the long-term goals of the business to help achieve the best results for our customers. It is a partnership and one does not work without the other. My team and I are responsible for approaching each situation with a tough-minded commitment to integrity and an empathic view that considers every angle.

2 What is the most rewarding part of your job? Enabling my team and others to succeed is the absolute best part of my job. Throughout my career I've had the opportunity to work with leaders who encouraged me to assume responsibilities I would not have otherwise considered. I feel fortunate to be able to do the same.

3 What do you think is the most important trait for a successful general counsel to have? I'm at a loss to pick just one, so here are the three that rise to the top for me: Creativity and having the critical ability to look at a situation from various and unique angles to problem-solve; Integrity is about asking the tough questions and doing the right thing, always; and Humor to avoid taking yourself too seriously.

4 Why did you go into law? While I can't jump, throw or sing, I can think and enjoy problem solving. The field of law is complex and designed to challenge those who choose to practice it. It is about recognizing and understanding the past in order to look ahead to where you are going, which given my fondness for history is one of the reasons why studying law felt like such a natural fit. I also wanted to find a profession where I felt I was using my capabilities to better the community around me.

5 If you weren't a lawyer, what would you be doing? Architecture and interior design. I've always loved creating beautiful, serene spaces where my family and I can feel joyful and inspired.

6 You were a history major. What historical figure would you like to have as a dinner guest? Only one? If I'm cooking dinner, it is always fun to cook for more people, so I'll give you my top three: a marine from the Battle of the Chosin Reservoir, world-renowned cellist Yo Yo Ma's mother Marina Lu, and Mother Teresa.

7 How do you like to spend your free time outside of the office? Being new to Minnesota, my family and I enjoy exploring the Twin Cities and being tourists in our new hometown. We were

watching "Diners, Drive-Ins and Dives" just before moving here, which is how we discovered one of our favorite places to eat: Kramarczuk's. We also love exploring the Mississippi River, or taking in a show at one of the local theaters. This area truly is a remarkable place to live.

8 What advice would you give a recent law school graduate? My first piece of advice is to do the basics brilliantly. It is always important to take risks and challenge yourself, but never forget the importance of the fundamentals. The second is to fight for joy. Find what makes you happy and never let go.

9 What book is on your nightstand? A constant on my nightstand is *A Gentleman in Moscow* by Amor Towles. My daughter and I read together most nights. Kate DiCamillo's *Because of Winn-Dixie* has quickly become a favorite for us both and is currently taking up residence on my daughter's nightstand.

10 Do you have a personal goal for 2020? I have the same goal for myself every year: keep listening and learning.



The Fund for Legal Aid and the Hennepin County Bar Association cordially invite you to the

39th annual Law Day Testimonial Dinner

Benefiting Mid-Minnesota Legal Aid

TUESDAY, MAY 5, 2020

HONOREE

Andrea Kaufman

Retired Director and Chair
The Fund for Legal Aid

Retired Development Director
Mid-Minnesota Legal Aid



KEYNOTE

*An Economy that Works
for Everyone*

Neel Kashkari

President and
Chief Executive Officer
Federal Reserve Bank
of Minneapolis

4:30 p.m. Reception (Cash Bar)

"Lunch with a General Counsel" Silent Auction

6:00 p.m. Dinner and Program

Hilton Minneapolis

1001 Marquette Avenue, Minneapolis Ballroom

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