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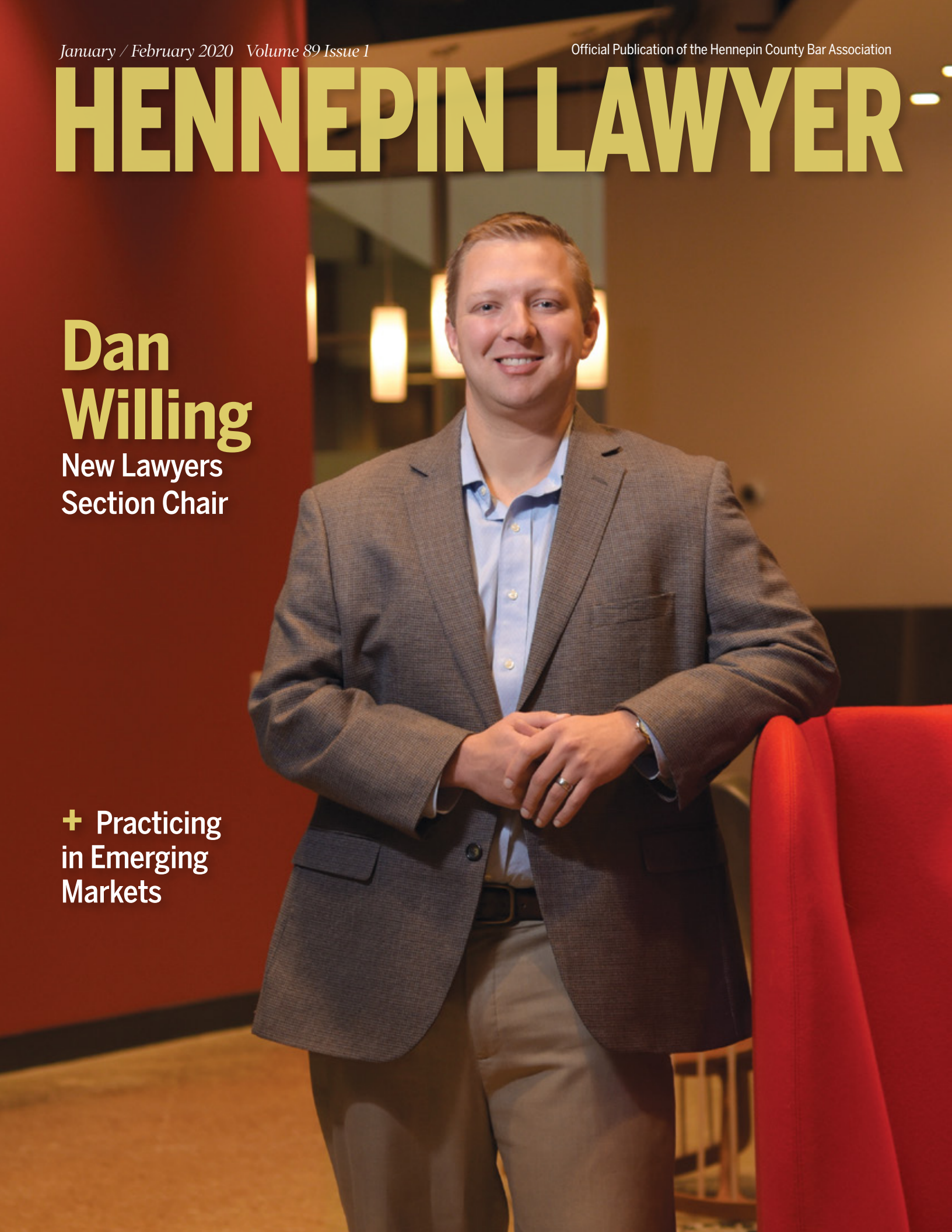
HENNEPIN LAWYER



Dan Willing

New Lawyers Section Chair

+ Practicing in Emerging Markets

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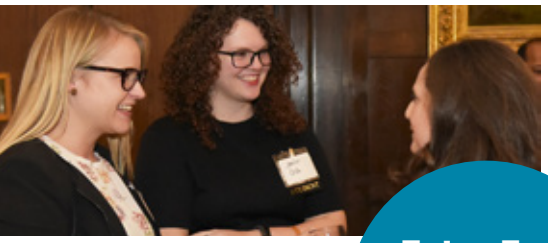


Enjoy Free Appetizers and a Drink





INVITING ALL HCBA MEMBERS:
From law students to new lawyers to our most experienced attorneys. Join us and join the fun at our winter social. Expand your network. Catch up with colleagues. Come meet, mix and mingle at Robins Kaplan.
Members: Attend for free
Non-members: $20


Contact sjohnson@mnbars.org with questions. RSVPs appreciated, but not required.

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HENNEPIN LAWYER

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PRACTICING IN EMERGING MARKETS

Hennepin Lawyer
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Doubling Down

In 1982, Buckminster Fuller—the theorist/futurist most often known as the inspiration for Epcot's Spaceship Earth design and philosophy—developed the theory of the Knowledge Doubling Curve. Fuller's curve begins at 1 C.E./A.D. Imagine all human knowledge gained before the Common Era—the height of the Roman Empire built on the rubble of early civilizations; 2,600 years of Chinese emperors, 3,000 years of Egyptian dynasties; multiple complex civilizations coming to life in the Americas; everything—is represented by a single knowledge unit.

It took 1500 years for the first single knowledge unit to double, and then until 1750 for it to double again. By 1900, humanity had a combined eight knowledge units—but it only took 50 years for it to double once again to 16 and then a mere 20 years for it to reach 32. Every time knowledge doubles, the time between the doublings is shorter and shorter—creating an exponential growth in human knowledge. When Fuller died in 1983, it was estimated knowledge doubled every 12-13 months. Now, the estimates are the entirety of the world's knowledge doubles in less than a day. Everyday. Meaning, tomorrow, we will know twice as much as a collective humanity than we do today.

Stop and think about it for a minute. Doubling the knowledge of yesterday does not mean twice as many people simply relearn old facts, it means our collective understanding of the world is twice as deep as it was yesterday. It may be new discoveries in areas as basic as quantum entanglement or as grand as new theories of how to process data on our facial expressions to teach a machine to make us our perfect cup of coffee.

Knowledge is not only coming at us faster, but our old understandings are becoming outdated sooner. Akin to radiocarbon dating, we can measure the usefulness of information by how long it takes for it to lose half its value. For example, memorizing the cost of a Large Mocha Frappuccino may only have a half-life of six months, if it changes price every year. Think about how our understanding of the law suddenly changes when a new case comes out, and then divide the time between cases on a subject by half. Sometimes it is decades—like Third Amendment cases—and sometimes it is days.

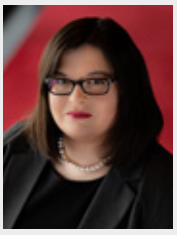
To be frank, the law just can't keep up. Every day, we are presented with new technology, information, and theories that challenge our understanding of the world, the law, and ourselves. The law, by function of the focus on precedent and legislative process, is deeply rooted in the past and takes longer to adapt and grow.

But some of the same things driving the immense growth of knowledge can also help law practitioners push the law to adapt to our ever-changing needs—the greatest being our ability to work collaboratively in a connected world, where knowledge-sharing allows teams and organizations to share knowledge over distance and time. We can access and act as experts for each other.

In this issue, we have sought out some of those experts who work in areas where the Knowledge Doubling Curve has extensively reshaped areas, created entirely new ones, or resurrected old ones from a less enlightened past.

Ayah Helmy and Joanna Woolman look at how our ever-evolving understanding of ourselves and our history change (and should change) something as seemingly straightforward as what we call a lake or a road. Kate Baxter-Kauf talks about how Minnesota companies and laws are influencing the ever-expanding field of data breach litigation and case law. Kaleb Rumicho and Caitlin Houlton Kuntz show what is old is new again, by exploring the new laws surrounding industrial hemp. And, finally, Colleen Dorsey jumps into the brave new world of artificial intelligence and machine learning to talk about some basics and the evergreen topic of ethics.

As we learn more, we must also set aside our old notions faster. It is our duty to learn how to learn, relearn, and learn again. If we fail to do so, we—and the law—will be sucked under in the coming knowledge tsunami.



Alissa Harrington

amharrington@flaherty-hood.com

Ms. Harrington is an attorney at Flaherty & Hood in St. Paul, specializing in the ever-changing area of municipal law. She formerly clerked for the Hon. William H. Koch, and graduated summa cum laude from Mitchell Hamline School of Law in May 2017. Ms. Harrington also holds a Masters of Advocacy and Political Leadership from the University of Minnesota-Duluth, and spent the first 10 years of her career in public service.

Putting Yourself Out There

As lawyers we are often asked to serve on nonprofit boards, do pro bono work, or just help those in need. Being busy often dictates declining requests that require your valuable time. However, my own experience is that volunteering can often lead to invaluable experiences that would never happen if you were just content with the same old routine.

About 10 years ago, I was asked by my subrogation trade association to scout a new hotel in Washington D.C. on a weekend trip. I really did not want to leave home for another weekend. After being pressured, I relented and agreed to go. On the Sunday at the end of the excursion, I had an encounter I'll never forget.

I was sitting at Reagan National Airport waiting for my plane to board when I saw two U.S. Marshalls escorting someone to the gate. I instantly recognized their charge to be U.S. Supreme Court Justice Antonin Scalia. They escorted him onto the plane before anyone boarded and then the Marshalls departed. I thought, "Wow, that's cool, Justice Scalia is on my plane."

I waited in line until my group was called to board. As I approached the counter I heard, "Jeff Baill to the podium." I announced my presence and was told that I had been upgraded to first class. As I entered the plane, I saw one empty seat in first class, right next to Justice Scalia. My heart started pounding and I thought about what I was going to say. Fortunately, the word hello came to mind.

Justice Scalia was sitting with headphones on and nodded hello back to me. I pretended I did not know who he was and went about my business of settling into my seat and pulling out my new issue of the *Subrogator*, my trade association publication.

People who know me well know that I pride myself in playing this game on an airplane of trying to learn all I can about the person sitting next to me. Sometimes that is a big mistake, essentially opening Pandora's box, when the person I sit next to is loud, obnoxious, and refuses to stop talking. Other times, I have learned a lot from a wise soul who is happy to share some wisdom. In any event, I decided this was the time I needed to use all of my skills to engage with one of the most powerful people in government.

About 20 minutes into the flight, breakfast was served. Justice Scalia took off his headphones and we began to chat. At one point he asked me what I do. I explained how I was a subrogation attorney and eventually described our trade association. He indicated to me he was involved in the law and understood a little about subrogation. He did not understand how subrogation would be a different area of practice than general insurance law. That opened the door for me to present my usual lecture on what we do and how it is so different from what other insurance practitioners do. It was at that point I had to pinch myself. Here I was, teaching one of the world's great legal minds about subrogation. Could this really be happening?

At some point in the conversation I began to feel a little guilty pretending I did not know who he was. I said to him, "Did anyone ever tell you, you look like Justice Scalia?" He replied, "Yes, because that is who I am."

I said I did not want to bother him about the Court but there was one question bugging me. I had recently attended the arguments on a health insurance subrogation case at the Supreme Court in which my trade association had filed an *amicus* brief. I left the hearing feeling impressed with the high level of discourse among the Justices and attorneys and felt strongly that these hearings should be televised to the public. Even though only a small percentage of the people would understand them, the benefit to lawyers would be immeasurable. I explained this to the Justice and asked his opinion on the issue. He said that he used to favor cameras at the Supreme Court but had changed his view. The Court was worried about 20-second sound bites being used out of context to put the Court in a bad light. He would entertain the idea of tape-delayed broadcast of the hearings once the decisions had been announced and the case was no longer in the public spotlight. He told me he thought "Ruth" might be in favor of televising hearings, but that Justice Souter had publicly stated it would happen "over his dead body."

We went on to talk about tennis, Italy, fishing, Chicago, New York, Ethanol, and various other topics strangers sitting on a plane may discuss. He was charming, funny, engaging, and just plain interesting. If he was not famous, he still would have been one of the most interesting people I had ever talked with on a plane.

When the plane landed, we said goodbye and he left. Later, my son asked me why I didn't get a picture or an autograph. My response was that it just did not feel like the right thing to do. I even feel a little funny writing about it. He let me into his life for a few hours and I wonder if I am being disrespectful in talking about it. However, since it was such a positive experience, I have decided that sharing this story is appropriate. When I got off the plane, however, the thought did occur to me that I have no proof this happened. Would people believe me? I can't control what others think. I know for me to have the chance to discuss subrogation with a Supreme Court Justice was one of the highlights of my legal career.

How many things had to fall in place for me to land in that seat on that morning? It was like I won the lottery. I hope I made his journey a little more interesting. I know I will never forget my flight that morning and how lucky I was that I agreed to put myself out there one more time.

Jeff Baill
2019-2020
HCBA President

jbaill@yostbaill.com

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

Getting to Know Dan Willing

2019-2020 New Lawyers Section Chair

Can you introduce yourself and say a little bit about your practice?

This year, as part of my duties as chair of the New Lawyers Section, I am a member of the HCBA's Executive Committee and board, I chair the New Lawyer Engagement Task Force, and I am on the Attorney Wellness Task Force. I also volunteer with Wills for Heroes. It has been a busy year.

Professionally, my work would qualify as nontraditional as far as practicing law goes. I am an internal wealth strategist with RBC Wealth Management and my role is to serve as a subject matter expert and resource on complex estate, financial, business succession, and trust related issues affecting RBC's clients. Practically speaking, I act as a link between the financial advisor who is responsible for your financial plan, savings, and investments, and the estate planning attorney who drafts your documents. In addition to my law license, I have my Series 7 and 66 from the Financial Industry Regulatory Authority, so I can speak to both the legal and financial sides of the equation, which helps me make sure everything is passing the way it is supposed to in a client's estate plan.

What types of programming can NLS members look forward to this year?

We have put together some outstanding programming already, but things will really pick up in 2020. In November, we hosted a writing workshop CLE and launched the New Lawyer Engagement Task Force to explore ways the HCBA can better connect with newer lawyers. We are excited to bring back Speed Networking and Networkouts, as well as introduce some new activities. In our speed networking events, NLS partners with one of the HCBA's substantive law sections to allow each person to meet dozens of other lawyers in less than an hour, followed by a social. It is a lot of fun and we always get a great turnout. The Networkout events evolved as one answer to the question, how can we put together an event that is healthy and supports wellness, while also encouraging networking? In our Networkout events, NLS partners with local fitness companies who hold a private workout event for us. Later, there is an alcohol-free happy hour with healthy snacks. As for something new, we will be hosting an escape room event sometime in January. Keep an eye on the HCBA calendar or come to our meetings to get the latest updates.

Left: Dan hiking with his wife Stephanie.

Right: The Willings' dog Summer playing in the snow.

You're married to a lawyer, what are your dinner table conversations like?

Everyone thinks it must be hard being married to another lawyer, but it's not. Even though we work in very different areas, there is enough common knowledge of the law to share things about our day and have the other person understand. The one area that being married to a lawyer may be different is that we both absolutely hate being wrong, so there can be a lot of lawyerly hedging.

What's been your favorite part about being involved with the NLS?

The relationships, without a doubt. My wife and I met in law school at the University of Oregon and moved here with no connections to the Minnesota legal community whatsoever. Now, many of our best friends are people we have met volunteering and at NLS events.

Why did you get involved with the NLS?

This is probably where I am supposed to say how I just knew that NLS would be a great way to get involved in the legal community while networking and building lifelong friendships, but the real reason I joined was because my wife (a past NLS chair herself) convinced me I should. I wasn't even a practicing attorney at the time and did not think getting involved in a "new lawyer" section would be a good fit for me. Luckily, she was right. The NLS has been a great way for me to get involved, make friends, and network with my peers.

What would you say to a new attorney who says they don't have time to get involved with the HCBA and NLS?

You do. You really do have time. The time commitment is modest, and the NLS is literally a group full of new lawyers. If anyone is going to understand your frenzied apology email at 11:15 a.m. that you can't make the 11:30 a.m. board meeting, it is other new lawyers. Is it a time commitment? Yes. But it is a manageable one, and one that is completely worth the effort.

What's some good advice you've received from more senior lawyers? And what do you think more experienced practitioners can learn from the newest generation of lawyers?

I have been lucky. In my brief career I have had the honor of working with several truly exceptional attorneys. The best advice I ever received was to be patient. New attorneys can get very impatient, wishing things would happen faster than they do. Most of us are overachievers by nature, so the idea that it will take *years* of sustained effort before you see the returns of your hard work can be difficult to accept. That lesson took me years to understand.

What's your favorite thing to do outside of work?

I love experiencing the Minnesota outdoors: camping, fishing, hiking, and skiing—especially at Lutsen—are all fantastic. Also, I enjoy video games, particularly during the winter when you can't get outside because it is dark by the time you finish lunch.

Dan's Favorites

TV Show:
Currently, I'm really enjoying *The Good Place* and *Bojack Horseman*. All time? Definitely *House*.

Book:
The Kingkiller Chronicle. I'm looking forward to the third when it finally comes out.

Movie:
Apollo 13, I must have watched that movie 50 times.

Video Game:
Overwatch is the current favorite. All time? Countless hours of my youth were spent playing Halo.

Local Restaurant:
Red Cow for burgers, Jax Café for steak, and Vellee Deli's Korean BBQ bowl for those Thursday afternoons when you just can't bring yourself to eat the sandwich you packed.

Judges Social

OCTOBER 30 – U.S. BANK STADIUM

Fall Member Social

NOVEMBER 14– THE MARQUETTE HOTEL

HCBA Fall Socials

Thank you to everyone who attended our fall socials. On October 30, HCBA members and judges from all levels of Minnesota courts gathered at Mystic Lake's Club Purple inside U.S. Bank Stadium for the annual Judges Social. On November 14, members gathered at the Marquette Hotel for our annual fall member social. We hope to see you at one of our 2020 events. Go to *hcba.org* for information on all upcoming HCBA events and socials.

MINNESOTA
Lawyer
Referral

For more information on joining the Minnesota Lawyer Referral panel, contact Dana Miner at dminer@mnbars.org or 612-752-6627.

A Newly Expanded Service

The Hennepin County Bar Association and the Ramsey County Bar Association are pleased to announce the launch of the Minnesota Lawyer Referral and Information Service (MNLRIS). MNLRIS combines the current HCBA and RCBA referral services into one merged and expanded nonprofit program designed to serve attorneys and those seeking legal services. Members of the public with legal needs can contact MNLRIS by phone or email for assistance. Bar association staff members are trained to identify legal issues and make referrals to attorneys based on areas of practice and geographical location. When a referral to a private attorney is not appropriate, referral counselors will direct individuals to relevant public service and government agencies.

This newly expanded Lawyer Referral program is an excellent example of the benefits of bar associations collaborating to meet the needs of attorney members and addressing the evolving needs of consumers seeking legal services. Formerly, the HCBA and RCBA each hosted their own individual attorney referral programs. Collectively the services helped over 13,000 members of the public and generated over a million dollars in revenue for participating bar members per year. By consolidating their programs and marketing efforts into a combined service, the MNLRIS will serve the bar and the public in a collaborative and expanded way.

What Expansion Means for the Public

Combining referral services will result in increased administrative efficiency. The MNLRIS proudly carries the seal of recognition from the American Bar Association for meeting its stringent requirements for referral services. In order to maintain this accreditation, and to provide quality service to the public, it is necessary for referral staff to vet attorneys, monitor survey results, ensure compliance with panel membership requirements, review case status updates, and follow up on complaints. Streamlining these administrative requirements frees up staff time which will be dedicated to requests from the public. The public in turn will experience reduced wait times and faster case placement. It goes without saying that people in the midst of legal complications are often in turmoil. Providing immediate referrals to knowledgeable attorneys or other methods for receiving legal information alleviates a significant obstacle in their search for remedies.

Expansion also means that persons contacting MNLRIS will have access to a larger pool of attorneys willing to consider alternative fee structures. Many people requesting service indicate that they are over income for *pro bono* service but cannot afford the traditional rates charged by attorneys. The MNLRIS will direct such callers to attorneys participating in our Reduced Fee Program who have agreed to work at lower rates. Alternatively, some legal consumers wish to hire attorneys to handle only a specific portion of their case. In those circumstances, MNLRIS will direct them to an attorney willing to consider cases on an unbundled basis. Ultimately, MNLRIS counselors will be able to efficiently direct the public to an expanded list of attorneys who are well suited to meet their specific need.

What Expansion Means for Attorneys

The expansion of the bar associations' referral services will only serve to increase its value to members.

1. Combining HCBA and RCBA referral services, increasing administrative efficiencies, and reallocating staff time to program implementation can result in increased revenue for participating attorneys. Fewer legal consumers with fee-generating cases will slip through the service's fingers because staff is currently helping other callers.
2. The bar associations will no longer be competing with each other. Creating the combined MNLRIS will result in a singular, more robust marketing plan that will generate more leads for participating attorneys.
3. Members participating in both HCBA and RCBA programs will have a singular source of contact for completing applications, updating reports, and making payments.
4. The implementation of a larger Reduced Fee Program that eliminates experience requirements and provides mentorship opportunity will result in increased opportunities for new attorneys seeking to build their practice.

What Expansion Means for the Bar

If participation in the MNLRIS does not make sense for your current practice, we want you to know that you can refer individuals to the bar associations with confidence. Whether you are speaking with a colleague needing assistance building their client base or a client with needs that are outside your practice area, the MNLRIS can help.

This program enhancement is just one of the ways your bar associations are working together to improve the legal landscape both for members and the public. It is an extraordinary example of what partnership and collaboration can do to improve the administration of justice.

Join us for a candid discussion about the current state of attorney wellness.

— followed by meditation & reception —

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ANSWERING THE CALL

The Path to Wellbeing in the Legal Profession

Monday, January 13, 2020

Science Museum of Minnesota, St. Paul
1:00 – 5:00 PM

2.0 Standard CLE credits to be applied for

Register online at www.mnbar.org

1:00 – 1:05 PM WELCOME
MSBA, HCBA, & RCBA Bar Presidents
Tom Nelson, Stinson LLP
Jeff Baill, Yost & Baill LLP
Sarah McEllistrem, Collins, Buckley, Sauntry & Haugh PLLP

1:05 – 1:15 PM INTRODUCTION
Justice David Lillehaug, Minnesota Supreme Court

1:15 – 2:00 PM PANEL DISCUSSION
Inherent stressors in the practice of law and their negative impact
Panelists:
Joshua Bobich, Ballard Spahr
Patty Beck, Minnesota Lawyers Mutual Insurance Co.
Matthew Foli, Guaranty Commercial Title Inc.
Moderator:
Shelley Carthen Watson, UofM Office of the General Counsel

2:00 – 2:25 PM KEYNOTE
Judge Donovan Frank, US District Court

2:25 – 2:40 PM BREAK

2:40 – 3:30 PM THREE ED TALKS
ABCs of Wellness
Joan Bibelhausen, Lawyers Concerned for Lawyers
Neuroscience of Wellness
Robin Wolpert, Sapientia Law Group, PLLC
Lawyer Competence and Ethics
Susan Humiston, Office of Lawyers Professional Responsibility

3:30 – 4:00 PM MEDITATION
Mike Millios, Millios Law

4:00 – 5:00 PM RECEPTION

The Junior Bar

New lawyers have always played an important role in the Hennepin County Bar Association. The Junior Bar section was formally incorporated in 1938. The section originally set out to "provide a common meeting ground for younger lawyers in order that they may more rapidly expand their acquaintanceship with practicing lawyers, judges and court and administrative officials," and "familiarize the younger lawyers more rapidly with the technique procedures, respective fields of and the mechanical operation of the routine functioning of the various judicial and administrative agencies."

While the name has changed to the New Lawyers Section, the mission of the section has remained relatively the same. In honor of the HCBA centennial, we'll look back at what the section was up to in 1946.

Requirements for membership have changed from just one's age to include newly practicing attorneys who have been admitted to the bar within the last six years.

In 1964, the **Junior Bar** changed its name to the **Young Lawyers Section** and it became the **New Lawyers Section** in 1994.

According to a *Hennepin Lawyer* article, Junior Bar **membership dropped by over 50 percent at the onset of WWII**. Average membership of the section at the time was 150.

YOUNGER LAWYERS REVIVE JUNIOR BAR WITH RETURN TO ACTIVE PRACTICE

By Charles S. Bellows
Vice Chairman, Junior Bar Section

With the return from service of a majority of the younger lawyers—under 35 years—in Hennepin County, the Junior Bar Section was returned to an active status in March of 1946. Luncheon meetings have been held twice a month, on the first and third Thursdays of each month, and no halt was called during the summer. Several luncheons have been devoted to an open discussion of current problems and possible solutions by the members of the Junior Bar Section. A guest speaker has been invited to each of the other meetings and the general purpose of these informal talks has been keyed to the reorientation of many of Junior Bar Members who were forced to forego the practice of law during the war.

Judge John A. Weeks of the District Court was present at the first regular meeting, and emphasized with telling effect from the Judge's point of view certain paramount points and typical failings of attorneys in the trial of cases. The Junior Bar's most recent speaker was Judge Fred B. Wright, Jr., who discussed some of the more troublesome circumstances arising out of the currently rising divorce rate as related to minor children. The operation of the office of the Clerk of District Court, pointed up towards a closer and more efficient cooperation between attorneys and the Clerk's Office, was presented by the friend of all attorneys, Carl A. Maurer.

Federal Trial Practice was highlighted by Judge Gunnar H. Nordbye who, furthermore, placed before the younger lawyers of the County a sincere challenge for success both at the bar and in the community as attorneys. Victor E. Anderson outlined the organization and functioning of his United States District Attorney's Office in a thoroughly engaging and interesting talk.

Continuing along the lines of a better understanding of Federal Practice, the Junior Bar invited Professor Wilbur H. Cherry, of the University of Minnesota Law School, to discuss the new Federal Rules, how they have worked, and changes which are currently being advocated. Undoubtedly one of the leading authorities in the country on that subject, Professor Cherry provided an exceptionally stimulating session. A more special phase of Federal Practice was ably presented by Mr. James E. Miller, Chief Counsel for the United States Wage and Hour Division here in the Northwest.

From the Municipal Bench, Judge D. E. LaBelle at another meeting of the Junior Bar discussed from his point of view as a Judge the basic, but often neglected, points of trial practice. To discuss the inner workings of our Supreme Court, and to round out a representation of all our courts, a former member of the Supreme Court, Prof. Maynard E. Persig, took a sample case through the court from start to finish. He further assured the Junior Bar Section of an increasingly important function in the future in view of the tremendous increase in the number of future Law School graduates.

Junior Bar Speakers

HON. HUBERT H. HUMPHREY, *Mayor of Minneapolis*
HON. JOHN A. WEEKS, *District Judge*
HON. FRED B. WRIGHT, JR., *District Judge*
HON. GUNNAR H. NORDBYE, *Senior Judge, U. S. District Court*
HON. D. E. LABELLE, *Municipal Court, City of Minneapolis*
MR. VICTOR E. ANDERSON, *United States District Attorney*
MR. C. AARON YOUNGQUIST, *Minneapolis Attorney*
MR. HORACE VAN VALKENBURG, *Minneapolis Attorney*
MR. CARL A. MAUER, *Deputy Clerk of District Court*
PROF. MAYNARD E. PERSIG, *Prof. University of Minn. Law School*
PROF. WILBUR H. CHERRY, *Prof. University of Minnesota Law School*
MR. JAMES E. MILLER, *Chief Counsel, U. S. Wage & Hour Division*
MR. WARREN E. BURGER, *St. Paul Attorney*
MR. PAUL J. MCGOUGH, *Minneapolis Attorney*
MR. ROBERT M. UEHREN, *Counsel Veterans Administration Regional Office*
MR. GEORGE MALONEY, *Minneapolis Attorney*
MR. JAMES D. BAIN, *Minneapolis Attorney, President Hennepin County Bar Association*

A departure from previous meetings was marked by a discussion of the always troublesome matter of charging fees. A series of questions relating to attorneys fees were put by a member of the Junior Bar to a panel consisting of Mr. C. Aaron Youngquist and Mr. Horace Van Valkenburg. The result was a frank discussion of very considerable value. The consensus of opinion was that if lawyers, especially the younger ones, would more often sit down to discuss the more troublesome problems of their profession, not only the attorneys but also their clients would stand to benefit. Along similar lines the all-too-long neglected public relations policy of the State Bar was discussed by Mr. Warren E. Burger of St. Paul. A leader in this field in Minnesota, Mr. Burger's enthusiasm as well as facts gained him a new roomful of converts.

At other luncheon meetings, Paul J. McGough, of Minneapolis, punctuated his points relating to trial practice with many concrete illustrations from his wide experience with juries. Mr. Robert M. Uehren, counsel for the Veterans Administration Regional Legal Department, has talked to the Junior Bar about the new and growing field of legal problems bearing on the Veteran. Mr. George Maloney, of Minneapolis, provided one of the Junior Bar's most instructive talks, when he highlighted some of the more important points relating to the Real Property Section's "Title Standards." The County Bar Association's new President, James D. Bain, was guest of honor at one meeting during the summer, and Mayor Hubert H. Humphrey gave the members of the Junior Bar plenty of food for thought, as well as action, as he forcefully outlined what, in his opinion, constituted the most vital legal points in achieving a better and more efficient city government.

The Junior Bar Section has not yet rounded out a full year since reactivation, but it is with confidence that the Junior Bar looks to the future as a medium whereby the younger members of the Hennepin County Bar may meet their contemporaries, benefit from the experience of others, air the problems of their profession common to all, and work out a constructive program for their profession and their community whereby those problems can be solved.

55

December, 1946

The first female chair of the Junior Bar Section was **Rosemary Moskalik** in 1944. She was also one of the first women to hold a major leadership role in the association.

How many sections can say they had a future U.S. Supreme Court Chief Justice speak to them?

Or a future vice president?

While most past leaders of this section have been male, the New Lawyers Section has had **13 female chairs** in the past 25 years.

Apply Now for 2020 Hennepin County Bar Foundation Grants

Since 1968, the Hennepin County Bar Foundation (HCBF) has made a positive impact on the community by funding legal projects and organizations that support those in need throughout Hennepin County. The HCBF seeks to improve the quality of people's lives through the law, to elevate the public's connection to the legal system, and to facilitate the delivery of legal services. The Foundation is focused specifically on efforts that serve individuals and families who face barriers in gaining access to justice, including those who are low income, and those who do not qualify for pro bono assistance.

The HCBF is dedicated to ensuring that its community grant giving has meaningful impact in Hennepin County for those who have difficulty gaining access to justice. In 2019, the Foundation gave $140,400 in community grants, ranging from $1,000 to $10,000, to 24 organizations. Grant applications for the 2020-2021 bar year will be published on January 2, 2020. Applications are due by March 2, 2020. View application materials at **www.mnbar.org/HCBF-grants**

New Lawyers Spotlight:

What's something new or innovative you did in your job last year?

Cresston Gackle
Cresston Law

In my solo practice and also in my work for the Third District Public Defender, it's easy to feel rushed by the demands of courts, counsel, and their schedules. I've found the pressure to process matters efficiently can prompt me to interrupt my clients during meetings to get to the point. Something new I've tried is staying silent several more seconds than I normally would. I've found those seconds can allow a client to have a moment to process their experience, consider whether they can safely share that experience, and then to share with me what their experience means to them. I've learned a great deal more from my clients, and been a much better advocate, because of a few extra seconds of silence.

Kyle R. Kroll
Winthrop & Weinstine

In the past year, I had a couple opportunities to add visuals to briefings that drove home important points and helped the court understand something that is difficult to convey in writing. For example, in one case I incorporated a graphical timeline to concisely explain an important series of events and their relation to each other. In another case, I opened a brief with a specific picture of the product at issue to emphasize how the product is used. Adding professional visuals, where appropriate, to written advocacy can make a powerful and memorable impact.

Molly B. Hough
Bassford Remele

I attended the *Forbes 30 Under 30 Summit* and took the law and policy track. This allowed me to build relationships with many successful entrepreneurs breaking into the cannabis industry. As a result, it has opened up many doors for speaking and presenting across the United States simply because I went to a more nontraditional lawyers conference. This is one example of how I try to think creatively about the ways in which I am building relationships with a targeted audience.

Roxanne Thorelli
Winthrop & Weinstine

For the 2019 calendar year, my professional goal was to either present a CLE or publish an article in the securities or employee benefits realm. I have been encouraged to be involved and market myself within the ESOP Association of employee benefits professionals, which also provides opportunities for presentations. Therefore, my new achievement for the year was to register, prepare, and co-present a CLE regarding ESOP Re-Leveraging Transactions at the ESOP Association Conference on June 13, 2019. At the session, we discussed re-leveraging as a sustainability strategy for ESOP companies, the pros and cons of re-leveraging, other potential alternatives, and the fiduciary issues and mechanics involved in re-leveraging transactions. The CLE presentation helped me develop credibility and confidence, and I am happy I was able to accomplish my professional goal for the year.

Rayeed Ibtesam
Yost & Baill

Something new I did last year was learn how to manage a team. In my last job, I worked as a legal editor. While I worked in teams, I was never the leader of the team. At my new job at Yost & Baill that I started last year, I get to lead & manage the firm's automobile subrogation group that consists of four people. The new opportunity gave me a chance to understand what it means to lead a team. I was able to understand the unique needs of my team members and found ways to tailor our team goals according to the strengths of our members. It also taught me how to build team morale and work towards making everyone feel like a valued member of our group. The new experience has been deeply enriching for me. I have learned to be a better manager than I ever was before and am excited to continue to make the most out of this opportunity.

2020 EXCELLENCE AWARDS

Nominate HCBA Members for this Year's Awards

In 2017, the Hennepin County Bar Association announced its new Excellence Awards program to honor individual members for contributions to the profession and the community. *The new Excellence Awards replace the association's previous awards programs*. Nominations for HCBA Excellence Awards will be accepted each year between July 1 and January 31, using the online nominations form at www.hcba.org

The HCBA Awards committee (appointed each year and chaired by the HCBA's immediate past president) will review nominations beginning in February and make its selections. Award recipients will be notified in March and the awards will be presented at the HCBA Annual Meeting planned for May 2020.

Up to twelve HCBA Excellence Awards may be awarded in a given bar year, selected from any of the six categories:

Advancing Diversity and Inclusion

Improving Access to Justice

Providing Pro Bono Service

Mentoring in the Profession

Advancing Innovation in the Profession

Serving the Association / Foundation

Although nominators are encouraged to identify the ways in which nominees excel in one or more categories, the Awards Committee will determine the individual category for which each award recipient will be recognized. Awards may not be given in every category each year, and there is no minimum number of award recipients in each year. The Award Committee's final recommendations regarding award recipients shall be approved by the Executive Committee. An additional award called *Career Contributions to the Profession* may be given periodically by the Executive Committee and will recognize a member's outstanding career contributions. To recommend an individual for this honor, please contact Ariana Guerra at 612-278-6313 or aguerra@mnbars.org.

Submit Your Excellence Award Nominations by January 31, 2020 at www.hcba.org

2019 HONOREES

Honoring Excellence

2018 HONOREES

What's in a Name?

By Ayah Helmy and Joanna Woolman

Social movements that challenge the status quo are ingrained in millennial culture. Whether antiracism, feminism, womanism, or anticolonialism, new frameworks through which we view our institutions have been either developed or recently popularized. Public debates, such as the one concerning the name of the lake popularly known as Lake Calhoun or the land at Historic Fort Snelling, are important measures of the zeitgeist. They force us to examine the language and symbols we take for granted, such as the name of a lake or the existence of a century-old statue.

In teaching our class about feminist jurisprudence, we challenge our students to consistently reframe social, legal, and political structures using a feminist lens. Feminism, as we understand it, encompasses antiracism, anticlassism, antiableism, anticolonialism, and more. Studying our legal system through these lenses can challenge its very foundation, as no law or opinion can be understood without the broader context of feminist jurisprudential theory. This means, for example, that we may examine the fact that pregnancy is treated as a disability because pregnancy leave was a concept retrofitted into a system that did not consider the needs of female workers.

As lawyers, we are taught the value of institutions and the precedent set by laws and courts in the jurisdictions in which we practice. We eagerly swear an oath to uphold the laws that govern our work, and, ideally, arduously abide by that oath each day. However, as society develops and its mores change, the structures that bind legal analysis can be cumbersome and unyielding to the changing tides. Legal precedent can sometimes bind the hands of lawyers and judges who, through the evolution of our collective consciousness, have different ideas about justice than the men who wrote this country's foundational documents and those who have historically been tasked with interpreting those documents.

Madeline Buck's illustrated book "Lake in Limbo" is availabe to download at *mnbar.org/THL*

Our developing understanding of mass incarceration, institutional racism, sexism, and ethnocentrism can clash with the legal schema in which we operate. For example, through an understanding of the prison industrial complex via commentary by sociologists like Loïc Wacquant or *The New Jim Crow* a la Michelle Alexander, the average judge may struggle to follow mandatory minimum sentencing guidelines or not have the tools at her disposal to address the issues that plague a defendant's life that may have led to criminal behavior in the first place. Practicing the law in these dynamic times sometimes finds lawyers and judges performing legal gymnastics to achieve a just and equitable solution while following the law.

From Black Lives Matter to applying Title VII to transgender individuals, this dilemma manifests in a variety of ways. It all, however, begins with the fundamental question: who created our laws and on what were these laws based?

Beginnings of Change

American law is based, in large part, on the English common law that was in effect at the time of the American Revolution.[1] Plainly, for most of their existence, our laws have been written, adopted, and interpreted by wealthy white men. Accordingly, the voices of women, ethnic and racial minority groups, and the poor have been largely excluded in the creation of laws and their judicial interpretations.

The first female in the United States to be admitted to the bar was Arabella Mansfield. This was in 1869. Three years later, the Supreme Court of the United States upheld Illinois' decision to deny Myra Bradwell's admission to the state bar, citing that the practice of law would destroy femininity and that, because the law stated that a woman could not enter a binding contract without her husband's approval, she was barred from practicing many of the important duties of a lawyer.[2] It was not until a century later, in 1971, that the Court would use the Equal Protection Clause to overturn gender-based distinctions.[3] Further, it was not until 1976 that gender distinctions were scrutinized under intermediate scrutiny.[4]

The first black lawyer in the United States was Macon Bolling Allen, who entered the bar in 1844 and was elected as a probate judge in 1874. It is paramount to note that while Mansfield and Bolling Allen broke molds to become lawyers, they were outliers and their rights as individuals were extremely limited despite their outstanding achievements. While Bolling Allen passed the bar in 1844, SCOTUS denied both free and enslaved blacks their citizenship in the Dred Scott case in 1857. While Bolling Allen was a lawyer, slavery was still legal. Neither women nor African Americans could vote while these pioneers were licensed attorneys.

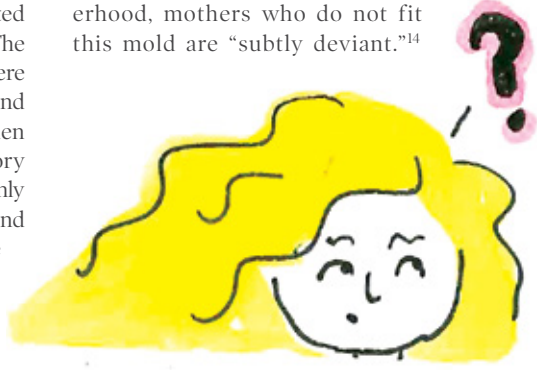
While there is increasing representation of disenfranchised communities in the legal field, the legal standing of these communities still lags behind the standing of the demographic this system was built to protect.[5] Today, discrimination is still pervasive and the tools to address discrimination are limited. For example, in 2018, SCOTUS heard a case in which a company rescinded a job offer that it had extended to a black woman because she would not cut off her dreadlocks.[6] The company's policy stated that employees cannot have "excessive hairstyles or unusual colors." SCOTUS determined that discrimination based on race is only limited to discrimination based upon immutable characteristics, which, in SCOTUS's opinion, did not include hair style—only hair *texture*. With a limited understanding of the history around black women's hair and the concept of race as a social construct, SCOTUS enshrined employers' ability to discriminate based on the mainstream's perspective, which largely sees black women's natural hair as unprofessional. This results in, essentially, a codification of the unspoken rule that people of color will only be able to be professionally and, therefore, economically successful if they leave their identities at the door.

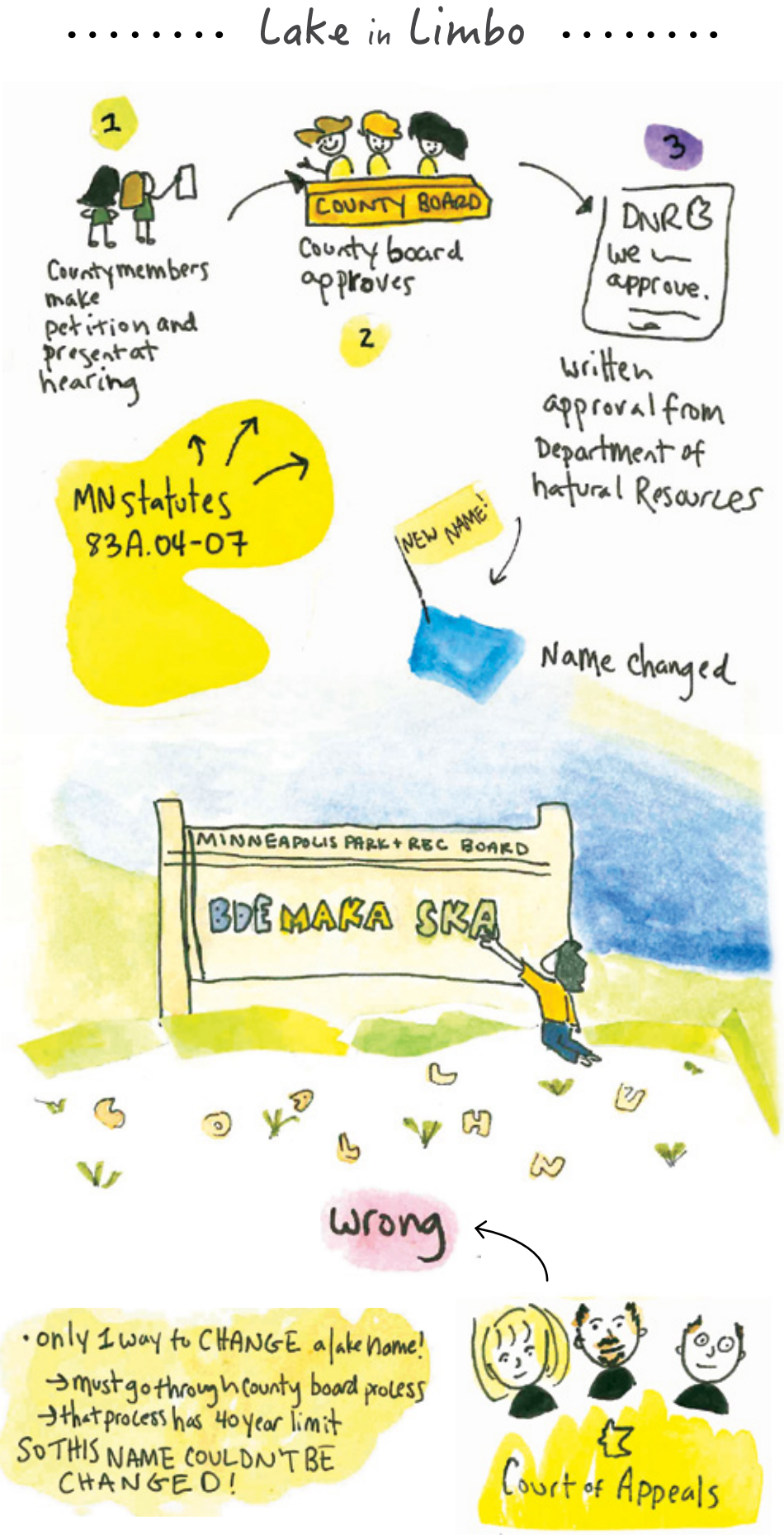
Intersectionality and the Law

Another example where the law has failed to keep abreast of changing understandings of disenfranchised populations' lived experiences is the common law's response to the concept of intersectionality. In her 1989 article, *Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics*, Kimberle Crenshaw argued that antidiscrimination laws, as they are currently written and interpreted, assume that race and gender are binary experiences.[7] This assumption leaves people without a voice, should their identities overlap with two disenfranchised groups. In practice, this lack of understanding results in cases like *Degraffenreid v. General Motors*, where an 8th Circuit court found that "black women" were not a protected class under the Civil Rights Act of 1968.[8] The plaintiffs in the case argued that black men were not discriminated against in the same way, and neither were white women, so black women were the only victims of the discriminatory practice. The Court determined that the Act only protected either one's race or one's gender, and so black women had to choose which of these two categories was used to discriminate against them. Unfortunately, however, since not all women were discriminated against in the same way and not all black people were discriminated against in the same way, the plaintiffs had no recourse for the discrimination they experienced.

Georgetown University Law professor, Robin West, posited in her seminal article, *Jurisprudence and Gender*, that modern legal theory is "essentially and irretrievably" masculine.[9] She argued that because of biological differences between men and women (women, she argues, can give birth and are, therefore, ultimately connected to other humans), the genders fundamentally differ in their approaches to how the individual is defined, which, in turn, leads to divergent moral positions on the rights and responsibilities of the individual in our society.[10] Therefore, she conjectured, because the law was created by men, it is a system that fundamentally ignores the perspectives and rights of women, and it sees the individual instead of the collective.[11] While some may disagree with the biological and cultural essentialism of West's argument, she offers an interesting underlying question: can laws be equitable, inclusive, and flexible if they are written by a monolithic group? Can the law understand the experience of nonmale, nonwhite, and nonwealthy individuals if it was drafted by white, male, wealthy individuals? Can the common law model that bases future interpretations on past interpretations possibly keep up with an evermore diverse society?

In her article *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, Lucinda M. Finley highlights the importance of legal language. "Language matters. Law matters. Legal language matters," she notes.[12] Language is socially constructed, and so are the concepts it reflects.[13] There exists a bias toward the familiar. As we use pre-existing legal language, we assume the validity of that language and the concepts it constructs. One example Finley highlights to illustrate this concept is using the modifiers "working," "single," or "welfare" in relation to the word mother. By adding these modifiers to "mother," we are reinforcing the concept that our assumption about mothers is that they are homemakers, married, and financially supported by their husbands. In assuming this type of motherhood, mothers who do not fit this mold are "subtly deviant."[14]





Another example she provides is the use of the term "minorities" to describe disenfranchised communities. This provides a myopic view of the world that focuses the experience on that of people of European descent living in the West, as people of color are only minorities in the West and, in fact, make up the majority of the world at large.

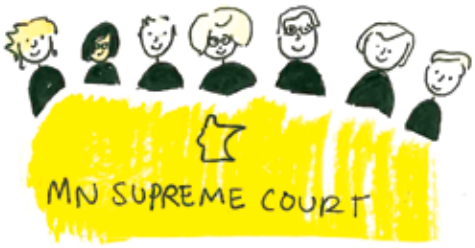
The reason why legal language is so viscerally connected to justice is because language not only communicates concepts but also it reinforces worldviews and understandings.[15] The worldviews and understandings that are reinforced are the ones that belong to those who have historically always created the dialogue in our civil society. One way that the law has failed to keep up with changing mores is by upholding the sanctity of historical monuments and landmarks despite how these monuments contribute to inequity in our society.

Local Names

In Hennepin County, the tension between cultural sensitivity and traditionalism has created a deeply entrenched debate about the name of Lake Calhoun, or in Dakota, Bde Maka Ska. In 2011, the Minneapolis Park and Recreation Board (MPRB) visited the possibility of changing the name of the lake after some Minneapolitans protested that such a landmark continued to be named after a voraciously proslavery politician. Its legal counsel found that the MPRB could not change the name, as state law delegates that power to the Commissioner of Natural Resources following a county board procedure, and only gives the commissioner that power during the first 40 years after the name is designated.[16] After the white nationalist shooting in Charleston, North Carolina, Hennepin County residents once again petitioned to change the name of Lake Calhoun. In the fall of 2015, Bde Maka Ska was added to the signage along with the lake's other name. Eventually, the Department of Natural Resources agreed to change the lake's name officially to Bde Maka Ska and the federal government also approved the name change. Some residents disagreed with the change and filed suit, citing that the process was illegal and that the lake's name was part of its history and charm. However, in April 2019, the Minnesota Court of Appeals found that, since the lake had its original name for more than 40 years, only the Legislature could change its name.

The department appealed this decision, and the Minnesota Supreme Court has decided to hear the case.

In the case of the lake, the crux of the issue lies in statutory interpretation: does the 40-year limitation on name changes apply to names that are offensive or only ones that are repetitive? If it only applies to mistakes or repetitive names, then the responsibility returns to the Legislature to change the rules regarding when a lake's name can be changed by the county board process and commissioner approval. Looking at this issue from a feminist jurisprudential lens, it is possible to argue that the drafters of this statute could not foresee the need for a post-40-year change mechanism because of the limited intercultural considerations they likely had at the time.



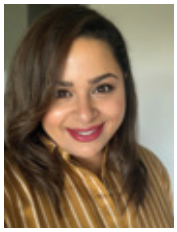
The Minnesota Supreme Court has decided to hear the case.

Similarly, the Minnesota Historical Society (MHS) has held public hearings across the state to determine whether it should rename Historic Fort Snelling. The fort structure itself would remain Fort Snelling, but the name of the 23-acre tract of land around it is up for debate. The land surrounding the fort had the Dakota name Bdote, meaning the place where two waters meet. Archeologists have found that this location was an important trading and ceremony site for the indigenous population. Later, when it was a U.S. military fort, it was the site of a concentration camp of approximately 1,600 Dakota people.[17] MHS seeks to create a space where Minnesotans of all backgrounds can learn about the complexity of Minnesota's history.[18] Why is the naming of streets, landmarks, and other sites such a big deal? Going back to Lucinda Finley, language—and its implementation—matters. In having monuments that glorify proslavery politicians, what message do our institutions send African American community members? In embracing the erasure of Native language from our lands, what message do our institutions send Native community members? In upholding homages to our historical brutality, are we abdicating our roles in dismantling the systems that have resulted from that brutality and continue to shape our country today?

The same legal structures that would maintain colonialist nomenclature would support stagnant views on disparities and discrimination under the law. It is in naming things—whether sites or concepts—that we identify our relationships with them. It is only by listening to diverse voices that we may adapt our practices, laws, and legal structures to give way to more flexibility and accountability under the same.

Notes

[1] Graham Hughes, *"Common Law Systems"* in *Fundamentals of American Law, ed. Alan B. Morrison* (New York: Oxford University Press, 1996), 12.
[2] Bradwell v. State of Illinois, 83 U.S. (16 Wall.) 130 (1873).
[3] *See Reed v. Reed*, 404 U.S. 71 (1971).
[4] *See Craig v. Boren*, 429 U.S. 190 (1976).
[5] *See, e.g.*, National Association of Women Lawyers 2015 Survey, *https://www.nawl.org/d/do/343* (last visited October 23, 2019) (providing statistics on the disparities in legal employment based on gender and race).
[6] *EEOC vs. Catastrophe Management Solutions*, No. 14-13482 (11th Cir. 2017).
[7] Kimberle Crenshaw, Demarginalizing the Intersection of Race and Sex: A Black Feminist Critique of Antidiscrimination Doctrine, Feminist Theory, and Antiracist Politics, 1 U. Chi. Legal F. 139, 140 (1989).
[8] Degraffenreid v. General Motors Assembly Div. St. Louis, 413 F.Supp. 142 (8th Cir. 1976).
[9] Robin West, *Jurisprudence and Gender*, 55 U. Chi. L. Rev. 2, at 2 (1988).
[10] *Id.*, at 3.
[11] *Id.*
[12] Lucinda Finley, *Breaking Women's Silence in Law: The Dilemma of the Gendered Nature of Legal Reasoning*, 64 Notre Dame L. Rev. 886 (1989).
[13] *Id.*, at 887.
[14] *Id.*
[15] *Id.*, at 888.
[16] *See* Minn. Stat. §83A.02-07 (2018).
[17] Minnesota Historical Society, *The US-Dakota War of 1862, http://www.mnhs.org/fortsnelling/learn/us-dakota-war* (last visited Oct. 23, 2019).
[18] Minnesota Historical Society, *Historic Fort Snelling, www.mnhs.org/fortsnelling/naming* (last visited Oct. 23, 2019).



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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.

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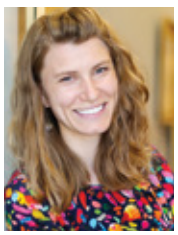
Ms. Woolman is a member of the Minnesota State Supreme Court Juvenile and Adoption Rules Committee and the American Bar Association Center on the Children and Law Parent Attorney Steering Committee. She also regularly presents locally and nationally at trainings focused on parent advocacy, system reform, and trauma-informed practice. An associate professor at Mitchell Hamline School of Law, she teaches Criminal Law, Constitutional Law, and Feminist Jurisprudence. Prior to teaching, she worked as a public defender in Minnesota.



Illustrations by **Madeline Buck**

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Ms. Buck is an illustrator and lawyer from Minneapolis. She enjoys creating visual aids that make complex legal concepts clearer. She believes that color and drawing are underutilized in the legal profession. Check out her legal-related illustrations at *www.maddybuck.com.*

So You Want to Be a Hemp Farmer?

Insights for the 21st-Century Hemp Producer

By Caitlin Houlton Kuntz and Kaleb E. Rumicho

A few months ago, a client called in a panic. This client was a hemp/cannabidiol (CBD) distributor, and the local post office had seized a shipment of industrial hemp that the client was expecting and forwarded the shipment to the post office's Inspector General. The post office employees flagged it due to its "pungent marijuana-like" smell. This occurred despite the attached lab results showing the Delta-9 tetrahydrocannabinol (THC) levels of the shipment were below the legal 0.3 percent threshold. Even more frustrating, the post office did not provide any additional information or guidance to the client. The client was left in the dark and was understandably upset.

Unfortunately, this is not a unique experience in the re-emerging hemp market. Many folks involved in the hemp business face obstacles and unpleasant encounters with the realities of the undefined (and unclarified) laws and regulations surrounding hemp. The issues usually revolve around the identity of the plant (marijuana vs. hemp), the legality of its transport (e.g., inter- and intrastate commerce), and the status of the plant under federal law (e.g., de-scheduling of hemp and banking regulations). As such, a great deal of tension and frustration remains among those involved in the hemp industry.

The unknown puts hemp businesses in a bind. Understandably, our client and many others in the industry are concerned with the lack of legal clarity and regulatory guidance from the appropriate authorities. It has great potential to hinder their growth and prospect in the market. It becomes difficult for businesses to plan ahead and set out expectations and assumptions to run their companies. Fortunately, in the case of our client, the post office Inspector General's office promptly released custody of the shipment—but did not provide how to avoid a similar incident in the future nor guarantee this would not happen again.

On Dec. 20, 2018, President Donald Trump signed into law the Agriculture Improvement Act of 2018, Pub. L. 115-334, also known as the 2018 Farm Bill, which legalized hemp production for nearly all purposes (with certain exceptions) and established requirements for growers. This article will discuss what hemp is and how it has historically been used, examine the legal status of hemp today, and address the challenges hemp producers still face in obtaining financial services to support their businesses.

What Is Hemp?

Hemp is a strain of the *Cannabis sativa* plant species that can be used to make a variety of commercial and industrial products, including rope, textiles, food, and many others. According to the North American Industrial Hemp Council, hemp can be used to make more than 25,000 products, from paper to building materials for homes. Hemp seeds also possess exceptional nutritional value. However, hemp often suffers a bad reputation because it is regularly confused with its cousin plant, marijuana.

Hemp is not marijuana. Hemp and marijuana stem from the same type of plant, and even look similar to an untrained eye. While hemp and marijuana look and smell alike, they are chemically and structurally different. The main difference between the two is the levels of THC the primary psychoactive chemical in marijuana. As defined by federal law, hemp has a THC content at or below 0.3 percent, whereas, marijuana has a THC content above 0.3 percent.

Historical Overview

Hemp production was effectively shuttered in the United States with the passing of the Marihuana Tax Act of 1937 (Marijuana Tax Act), which placed an extremely high tax on marijuana. Prior to this ban, however, hemp was a widely used agricultural product. There is evidence of the use of hemp in ancient civilizations, and its production can be traced back to thousands of years ago in Central Asia. The oldest surviving piece of paper, made of hemp, was discovered in China and dates back over 2,000 years.

From the 1600s to 1800s, hemp was a vital fiber crop in Europe, Russia, and North America. In fact, a British royal decree in the early 1600s mandated that colonists in Jamestown grow certain amounts of hemp to be deployed for various uses, such as oil, clothing, canvas, and rope. Hemp was a choice material for cordage and sailcloth for British ships because of the quality and strength of the fiber and its resistance to rot. Similar decrees were subsequently issued in other colonies in North America. Many

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historians claim that the first flags of the United States were made of hemp cloth.

Growing and using hemp was the standard practice in the United States for many years. However, in the first half of the 20th century, as labor costs increased and synthetic fibers such as polyester and nylon were introduced into the market, hemp's popularity declined. Although hemp was grown commercially (with increasing governmental interference) in the United States until the 1950s, its doom was inevitable following the passage of the Marijuana Tax Act. The "Hemp for Victory" Campaign during World War II promoted production of hemp for use by the U.S. military, and hemp was briefly widely produced, but by the end of the war, the restrictions under the Marijuana Tax Act resumed. Eventually Congress passed the Controlled Substance Act of 1970, banning the production of hemp outright with few exceptions.

Under the Controlled Substance Act, all cannabis varieties, including hemp, were declared as Schedule I controlled substances (alongside other illicit substances such as LSD, ecstasy, heroin, methaqualone [i.e., Quaaludes], and peyote), with the U.S. Drug Enforcement Administration (DEA) serving as the regulatory authority. While the Controlled Substance Act generally banned hemp, certain growers and researchers were allowed to grow it by obtaining a permit from the DEA.

Hemp Today

Currently, the main producers and suppliers of hemp are China and Eastern Europe, where hemp was never banned. In the U.S., legal restrictions surrounding hemp are now fading but not gone. The U.S. Agricultural Act of 2014, section 7606 ("2014 Farm Bill") initially paved the way for institutions of higher education and state departments of agriculture to grow hemp for research purposes, provided they receive permits from their respective states under regulated research programs. Additionally, the 2014 Farm Bill established a definition of hemp, setting the THC threshold at 0.3 percent on a dry weight basis. Shortly after the 2014 Farm Bill enactment, the Minnesota Industrial Hemp

Development Act became law, allowing the Minnesota Department of Agriculture (MDA) to create a hemp research pilot program (the "Industrial Hemp Pilot Program") to study the growth, cultivation, and marketing of hemp as an agricultural crop.

As part of the application process for the Industrial Hemp Pilot Program, all first-time applicants are required to submit fingerprints to the MDA, provide Bureau of Criminal Apprehension background checks for all persons that would handle hemp seed, provide a detailed map of the growing site, and stated research goals and deliverables. Once approved, the pilot participants are required to provide a report to the MDA regarding seed varieties planted, agronomic findings, and any processing, distribution, and sales of products. Each license is effective for a one-year period and Pilot Program participants must re-apply each year to continue to produce their hemp. According to the MDA, this Pilot Program will continue to be in effect in Minnesota until the U.S. Department of Agriculture (USDA) has approved the state's 2018 Farm Bill plan (as discussed below), allowing uninterrupted production and processing of hemp while the USDA develops its processes.

Although the 2014 Farm Bill allowed hemp to be grown, it was still considered a Schedule I controlled substance and subject to DEA oversight, continuing to create legal obstacles for those growers and researchers permitted under the 2014 Farm Bill. As such, the 2018 Farm Bill went several steps further and officially legalized hemp by excluding it from the definition of "marijuana" under the federal Controlled Substances Act, provided the crop does not exceed 0.3 percent TCH content.

While the 2018 Farm Bill expands the potential for hemp production, it still does not create a system in which producers can grow it as freely as other crops. The USDA, in lieu of the DEA, now has the authority to regulate hemp and oversee commercial cultivation programs administered by state and tribal governments. The 2018 Farm Bill also set up a shared federal and state regulatory authority over hemp, outlining the steps a state must take to develop a plan to regulate hemp and submit it to the Secretary of Agriculture for approval.

Nonetheless, uncertainty still exists with regards to the legal framework surrounding the legality of hemp production. In an Oct. 29, 2019, press release, the U.S. Department of Agriculture announced the establishment of the U.S. Domestic Hemp Production program, a byproduct of the 2018 Farm Bill. This program is supposed to create a consistent regulatory framework around hemp production throughout the United States.

On Oct. 31, 2019, an interim final rule formalizing the program was published in the Federal Register. This interim final rule allows hemp to be grown under federally approved plans and makes hemp producers eligible for a number of agricultural programs. USDA's Farm Service Agency (FSA), Natural Resources Conservation Services, and Risk Management are updating guidelines on several programs to support hemp growers, including (1) Whole Farm Revenue Protection (allowing coverage of all revenue for commodities produced on a farm up to a total insured revenue of $8.5 million); (2) Noninsured Crop Disaster Assistance Program (provides insurance-type coverage due to adverse weather conditions); and (3) Farm Loans (making hemp producers eligible for FSA farm loans, like operating, ownership, beginning farmer, and farm storage facility loans).

This rule includes provisions for the USDA to approve hemp production plans developed by states and Indian tribes including: requirements for maintaining information on the land where hemp is produced; testing the levels of THC; disposing of plants not meeting necessary requirements; and licensing requirements. It also establishes a federal plan for hemp producers in states or territories of Indian tribes that do not have their own approved hemp production plan.

As a result, hemp farming is once again on the rise. As of the passage of the 2018 Farm Bill, 46 states have legalized hemp production, with Idaho, Mississippi, New Hampshire, and South Dakota as the only holdouts. According to the annual survey of state departments of agriculture conducted by Vote Hemp, since the passage of the 2018 Farm Bill, over 510,000 acres of hemp were licensed to be grown across 34 states, an increase of more than 455 percent over the previous year's licensed acreage. Additionally, according to the Minnesota Hemp Farmers and Manufacturers Association, Minnesota has seen a sharp increase in hemp farmers over the same time period—jumping from fewer than 100 growers to nearly 500 certified hemp farmers permitted to produce hemp under Minnesota's existing pilot program.

Minnesota is currently developing a hemp program that is compliant with the 2018 Farm Bill. In the meantime, Minnesota continues to operate the existing Industrial Hemp Pilot Program, allowing farmers to continue to grow hemp while the new Minnesota state plan is developed, approved by the USDA, and implemented.

So You Want to Find a Hemp Banker?

Like any other enterprise, expanding hemp businesses will likely require financing to get off the ground and scale operations. While many bankers are excited to start building relationships with hemp entrepreneurs, hemp agribusinesses may still encounter challenges when trying to obtain financial services. The 2018 Farm Bill did indeed declassify hemp as a Schedule I controlled substance, but it did not contain any special protections or safe harbors with respect to financial institutions (there is pending legislation regarding banking cannabis businesses which are legal under state law that would do so, but as of late 2019, its fate remained undecided). Ultimately, hemp's potential to go from a perfectly legal substance to a Schedule I controlled substance without much warning or control, as discussed in the next section, still leaves both practical and regulatory roadblocks to banks signing up hemp farmers as customers.

The Practical

Banks cannot just hand out loans to anyone who asks. They must review the applicant's business plan, expected transactions, collateral, credit history, and financial projections in order to establish confidence that the loan will indeed be paid off and the bank will not take a loss on its investment. Hemp as an agricultural crop presents a unique gamble. Lenders will look to the reliability and sufficiency of the hemp crop as *collateral,* as well as the source of *cash flow*

for the business when considering financing for hemp-growing operations.

The catch, of course, is that hemp can be a volatile crop. It can be difficult for growers to control with certainty the level of THC that will be present in the plants. In the event that a field "goes hot," so to speak, and the THC content test impermissibly high (above the 0.3 percent threshold), the plants will be considered marijuana under federal law, and the grower can be forced to destroy the crop. Or, suppose the grower's supply is seized during interstate transport by authorities in one of the few states that have not yet legalized hemp on a state level (as happened over this past summer in South Dakota). In these circumstances, the bank could be facing a borrower lacking reliable cash flow to support the debt servicing or left without sufficient collateral to back up the loan (even where insurance or other collateral is available), necessitating scrutiny from bank management as well as from regulators. In addition, any deposits or cash management transactions the bank has facilitated with respect to the hot crop could potentially be considered proceeds from illegal activities and thus subject to regulatory action.

The Legal/Regulatory

Lingering uncertainty regarding the rules and regulatory expectations surrounding hemp businesses tends to be the top sticking point for banks considering engaging the industry, with the biggest concern stemming from the requirements of federal laws regarding anti-money laundering (AML). Banks are required to monitor and report on activities of their customers that may be tied to illegal activities, and banks (and individual bank officers!) that process transactions or handle or lend money relating to illegal activities can be heavily sanctioned, fined, or even criminally prosecuted for facilitating money-laundering.

The general response from federal banking regulators has been that banks should continue to follow established policies when engaging hemp customers, and that hemp customer relationships should be evaluated on a case-by-case basis. Federal regulators released joint guidance in December 2019 confirming that banks are not required to file suspicious activity reports solely because a customer is engaged in the cultivation of hemp in accordance with applicable laws and regulations (note that this guidance does not extend to marijuana). Banks are still expected to comply with all applicable regulatory requirements with respect to hemp customers, including maintaining an AML compliance program "commensurate with the level of complexity and risk involved." Said another way, existing AML laws and compliance expectations still apply, and banks must still file suspicious activity reports if they have a reason to believe a hemp customer is not operating within the requirements for legal hemp production. Compliance with this guidance may involve some trial-and-error as bankers and regulators navigate its practical application, and additional guidance could be forthcoming as hemp programs are launched.

Similarly, on the state level, things are not quite settled. State banking regulators are paying close attention to the development of the federal- and state-level compliance programs, and many are working to craft guidance for their constituent banks on how to safely and soundly engage hemp customers.

Proceeding with Caution

Despite these concerns, some banks have found ways to extend financial services to legal hemp businesses by employing special risk-management procedures and careful oversight. Even when dealing with those financial institutions that feel comfortable engaging the hemp industry, hemp customers can expect to be treated as "high-risk" customers and face stringent due diligence and ongoing monitoring to ensure their business is conducted consistent with state and federal law. Hemp businesses should brace themselves for plenty of questions from their financial institutions. *Who* is involved with the business, including investors, employees, and vendors? *What* policies and procedures has the business implemented to ensure compliance with state and federal law? *When* is the business obtaining the appropriate licensing, and then testing, monitoring, and reporting on its crops and compliance program? *Where* are crops grown, stored, transported, handled, and processed? *How* is the business structuring its operations to guard against abuse and criminal activities?

Banks will continue to be cautious until the legal and regulatory considerations are more settled, and attitudes could change as state and federal regulators continue to develop and release additional regulations and guidance with respect to hemp.

Conclusion

The 2018 Farm Bill has and will continue to boost hemp production and sales in the United States. The USDA's interim final rule is a positive step forward in providing a helpful legal framework to interested parties, including law enforcement, other regulatory agencies, states, and the farmers themselves. Additionally, many people who were initially hesitant to get into this resurging hemp åindustry are now able to pursue their business more confidently and with less concern about federal prosecutions. That said, the industry is still far from a settled legal and regulatory framework. Financial services will continue to be a challenge for hemp entrepreneurs until banks feel more comfortable engaging them without the threat of regulatory sanctions. Work still needs to be done, and all eyes will stay trained on the state and federal regulators as hemp production programs and guidance continue to evolve.

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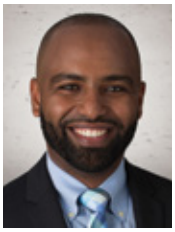

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Ethical Traps to Consider When Implementing AI

By Colleen Dorsey

There are so, so many ways that artificial intelligence and machine learning (AI/ML) can improve our quality of life. If you take any sort of deep dive into the subject, you will find amazing possibilities and/or discoveries that are already happening or are in the making. I listen to a podcast called *TWIML AI* hosted by Sam Charrington.[1] Recently, I learned about a tool being developed by a researcher at MIT that is using AI/ML to recognize emotion in speech in order to assist children with autism, who often have difficulty mastering this skill.[2] While this particular tool is still in development, it gives us a sense of the extent to which AI/ML can enhance our lives and the lives of those we love.

For all of the potential good it can do, AI/ML also has potential for significant harm. The harm to which this article refers is that of bias and discrimination. In addition to offensiveness from a human sensibilities and dignity standpoint, bias and discrimination also has a real impact on our nation's economy, at least if we take the view most leaders take about what should be measured to determine the health of a nation's economy. For instance, if we measure a nation's GDP (gross domestic product), at least in the United States, one important contributor is consumer spending. And because we are such a consumer-driven society, there is an impact on spending when consumers experience bias and discrimination. If certain categories of citizens (who are, incidentally, poised to represent most of the population in the United States by 2045[3]) are discriminated against with respect to their ability to get approved for loans, our consumer-driven economy suffers. If these same groups are discriminated against with respect to hiring decisions, our consumer-driven economy suffers. Unemployed and underemployed consumers spend less.

It might be useful at this point to explain what AI/ML is and how it's created. The Department of Defense (DoD) recently published, through the Defense Innovation Board, recommendations on the ethical use of AI by the DoD.[4] The DoD's definition of AI is broad, but good, considering the many ways to define AI/ML. The DoD defines AI as "a variety of information-processing techniques and technologies used to perform a goal-oriented task and the means to reason in the pursuit of that task." The reasoning portion of the task is the machine-learning part. Data is inputted into a computer, along with corresponding outputs. The inputs and outputs are called training data. This training data creates the algorithm that matches the inputs to the outputs and is used by the computer to teach itself and improve on a specific task without being explicitly programmed to do so. For example, a computer program designed to recognize a dog over another animal would be trained by inputting thousands of pictures of dogs. Once the results of that training are complete, we have a model. We can then put new inputs into the model to get the outputs that are the computer's best guess at whether the image is a dog or not.

This is a very simple example; so, to further understand how advanced AI has become, it is useful to have a basic understanding of linear algorithms. A linear search is the most basic of searching algorithms. Think about searching through a paper phone book, one name at a time, until you find the name you are looking for. This is an example of a linear search. Linear searches have been used for decades. Developers have now created much

more sophisticated algorithms that mimic the human brain, called artificial neural networks (ANNs). ANNs attempt to imitate how the human brain processes information. The brain can take multiple inputs and further process them to infer hidden, as well as complex, nonlinear relationships. The brain is also capable of learning from its past mistakes. ANNs attempt to duplicate how this brain neuron system functions. The neurons are created artificially on a computer. Connecting many such artificial neurons creates an artificial neural network.

With a general understanding of what AI is and how it attempts to mimic the human brain, it is a bit easier to see how far-reaching it can be in our everyday lives. Consider an algorithm built to determine whether a customer might default on a loan. If the only training data being inputted into the system to teach the system what a low-risk loan looks like is data on loans made to white males, the system may unfairly flag loans to other races and genders as high risk. Or how about whether a male or a female will be a better hire? If the training data being inputted to teach the system what a good hire looks like consists only of resumes of men, the system will spit out resumes of women as not being a good hire.

By now, I hope you have a feel for the importance of the training data and how biased, wrong, or skewed information can result in unintended consequences. Just as (in most instances), people who get caught up in corporate scandals do not set out intending to break the law or perform unethical acts, so is it that developers and others involved in creating AI/ML systems are not consciously seeking to create biased or discriminating systems. This lack of awareness makes education on the subject that much more important. "I did not intend for that to happen" isn't going to help if your program and product discriminate against a whole segment of the population.

The following examples of inadvertent bias built into AI/ML systems illustrate the importance of open dialogue on these issues. Google created an AI system called BERT. The intent of BERT was to teach computer systems "the vagaries of language in general ways and then apply what they learned to a variety of specific tasks."[5] The end uses of this technology ranged from completing sentences and automatically analyzing contracts to assisting our beloved digital assistants like Alexa. The data BERT learns from includes decades of biases. Data inputted into the systems include books, Wikipedia entries, and news articles. These sources, it turns out, are filled with bias. For instance, BERT is more likely to associate men with computer programming and generally does not give women enough credit.[6] Cade Metz wrote about the issues with BERT in an article in the *New York Times*. He describes a computer scientist, Robert Munro, who one afternoon fed 100 English words into BERT: *jewelry, baby, horses, house, money, action.*[7] "In 99 cases out of 100, BERT associated the words with men rather than women. The word *mom* was an outlier.[8] Munro also examined other language applications being offered by cloud-computing services from Google and Amazon Web Services. He found that neither of these services recognized "hers" as a pronoun though they did correctly identify "his." When alerted to these issues, Google and Amazon Web Services stated they were aware of the problem and working on resolving it.[9]

This lack of awareness makes education on the subject that much more important. "I did not intend for that to happen" isn't going to help if your program and product discriminate against a whole segment of the population.

Another example involves a program developed for a large university hospital system to address health concerns before they become chronic.[10] The program rated patients on a risk scale to determine if they qualified for a VIP-type care coordination program. The idea was if high-risk patients received certain care and health attention, it would help to head off chronic conditions before they occurred—or got worse. A group of black patients and white patients were assessed a risk score, and, if they hit the appropriate level, they were put into this care coordination program.[11] A couple of researchers from Berkeley, in reviewing the health conditions of those with the same risk scores, noted that the white patients were getting better but that the black patients were actually getting sicker. After delving into the situation a bit more, the researchers found that one of the correlations used to determine whether a patient (white or black) would get access to the program was the number of federal health dollars spent on them on an annual basis. In digging even further, they discovered that, on average, the black patients had approximately $1,800 less in health care dollars spent on them per year than their white counterparts.[12] Because of this, they were not making the cut for this elite care coordination program. Let that sink in: *fewer federally available dollars are allocated to black patients each year.* And then think about how much money, in terms of health care costs, $1,800 represents. Perhaps it was an MRI they were refused? Perhaps they were told they did not need X rays?

The data or training set that the programmers used was pulling on historically cemented bias—the federal dollars allocated to white patients vs. black patients. The researchers went back and looked instead at the *health* of the patients as measured by "avoidable costs" such as emergency visits and hospitalizations and flare ups of chronic conditions over the year.[13] After experimenting with a model that combined both health and cost prediction, they were able to reduce the bias by 84 percent.[14] What does this mean? It means that a lot of biased data is out there and that it starts with the fact that *people are biased.*

This shouldn't really come as a surprise. After all, we wouldn't need civil rights laws if we were, as a world society, great at treating each other equitably. Bias has existed for a long, long time and is not likely to go away in its entirety any time soon. If we all agree this is the case, then it's not a great leap to see that the data sets we use to train computers are likely to be polluted with some level of discriminatory bent. Perhaps we should build into the AI/ML product development processes a *presumption* that the data is tainted? Cross-functional teams including engineers, product developers, marketers, sales, human resources, legal and compliance and ethics folks could be created and required to insert pause points into the production phases wherein they brainstorm every possible way that the data could be skewed against a protected class.

Because of this potential for (or certainty of, depending upon how we look at it) skewed data, it's also very important for teams to understand and fully articulate in writing the purpose or intended use of the system being contemplated or created. Wrong goals or unarticulated uses can lead to unintended consequences. Some companies will push back that implementing these sorts of processes and discussions around AI/ML creation is not practical and that businesses just don't have the time to do it, especially as it relates to technology, which moves at warp speed. But what are meetings for if not to debate why a project should be implemented? Isn't this a process already baked into our corporate culture? This is certainly what business leaders and boards do all the time. Putting these decisions into a documented process whereby they can show potential complainants the rigor their organization put into the decision-making processes is never a bad use of time.

[1] Podcast, TWIML AI with Sam Charrington, episode 312 dated October 28, 2019, entitled "Using AI to Diagnose and Treat Neurological Disorders with Archana Venkatarama."
[2] *Id.*
[3] William H. Frey, "The US will become 'minority white' in 2045, Census projects," March 14, 2018, The Avenue, The Brookings Institute; *https://www.brookings.edu/blog/the-avenue/2018/03/14/the-us-will-become-minority-white-in-2045-census-projects/*.
[4] AI Principles: Recommendations on the Ethical Use of Artificial Intelligence by the Department of Defense, Defense Innovation Board; *https://media.defense.gov/2019/Oct/31/2002204458/-1/-1/0/DIB_AI_PRINCIPLES_PRIMARY_DOCUMENT.PDF*
[5] Cade Metz, "Finally, a Machine That Can Finish Your Sentence," *New York Times*, November 18, 2018.
[6] *Id.*
[7] *Id.*
[8] *Id.*
[9] *Id.*
[10] Amina Khan, "When computers make biased health decisions, black patients pay the price, study says," October 24, 2019; *https://www.latimes.com/science/story/2019-10-24/computer-algorithm-fuels-racial-bias-in-us-healthcare*
[11] *Id.*
[12] *Id.*
[13] *Id.*
[14] *Id.*

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Modern Data Breach Litigation

By Kate Baxter-Kauf

Modern data breach litigation has emerged in the past few years, in large part following the data breach in November and December 2013 at Target Corporation, a flagship Minnesota company. In the past six years, as data breaches at major retailers, medical and health insurance companies, and tech giants have become evermore complicated, and as the public has become increasingly aware of cybersecurity threats and privacy interests, this litigation has become an ever larger part of the litigation landscape. And for Minnesota consumers, notifications that personal and credit information has been compromised have become simultaneously shocking and commonplace. Not surprisingly, data breach and cybersecurity litigation have also become an emerging market for Minnesota lawyers across all types of practice, including litigation, transactional work, and advising.

Within that landscape, lawsuits brought by data breach victims in an attempt to redress their damages from retailer, medical, and other financial data breaches have become an increasingly large part of the class action landscape. Many non-class action attorneys are aware of those lawsuits because they have received class action notices themselves or because of Article III standing disputes over when and how different victims of data breaches have standing to sue. However, what was an emerging circuit split landscape has evened somewhat: while there are divisions between how different courts decide the dispute, almost all federal appeal courts, including the 8th Circuit, have provided circumstances under which different data breach victims—consumers, patients, financial institutions—have standing.

Two big, well-known Supreme Court decisions inform data breach litigation and plaintiff standing. The first is *Clapper v. Amnesty International USA*, which is the most recent recitation for the basic test for establishing the injury-in-fact element of Article III standing, holding that "threatened injury must be *certainly impending* to constitute injury in fact."[1] Second, *Spokeo, Inc. v. Robins* holds that the Constitution's Case or Controversy Clause requires any plaintiff to allege an injury-in-fact that is "concrete and particularized."[2] *Clapper* and its application meant that many courts found that, absent allegations of actual identity theft or other fraud, increased risk of harm alone is insufficient to confer Article III standing.[3]

Some courts, like those in the Ninth Circuit, on the other hand, found that increased risk of harm, mitigation damages, or other exposure were enough to meet the requirements for Article III standing.[4] In Minnesota and the Eighth Circuit, however, the application of the Article III standing doctrine has played out in only a few cases. In *In re Target Corporation Customer Data Security Breach Litigation*, for example, Judge Paul Magnuson found cognizable injury for consumer plaintiffs based on allegations that Target's data breach had resulted in customers incurring unlawful charges, restricted or blocked access to bank accounts, inability to pay other bills, and late payment charges or new card fees.[5] The Eighth Circuit, however, in deciding *In re SuperValu, Inc.*, found injury-in-fact for allegations of actual identity theft but required additional information related to increased risk of threat than those originally alleged in the complaint.[6]

Minnesota's particular relationship to data breach litigation extends beyond the mere timing coincidence of the Target Data Breach in 2013; that case was the first under Minnesota's Plastic Card Security Act (PCSA).[7] Under the PCSA, any person or entity "conducting business in Minnesota" is forbidden from retaining credit or debit "card security code data, the PIN verification code number, or the full contents of any track of magnetic stripe data" after the authorization of the transaction (or, for PIN debit transactions, for more than 48 hours after transaction authorization). If a company violates that requirement then suffers a data breach, the violating company "shall reimburse

the financial institution that issued any [credit or debit cards] affected by the breach for the costs of reasonable actions undertaken by the financial institution as a result of the breach in order to protect the information of its cardholders or to continue to provide services to cardholders." This liability shift, which was enacted in 2007 after a previous retailer data breach, provides a powerful incentive for retailers in Minnesota to secure information and use updated credit card technology. The incentive also extends beyond the borders, since at least the *Target Corporation Customer Data Security Breach Litigation* applied the PCSA to all companies doing business in Minnesota and was not limited to only those business transactions that took place in Minnesota.[8]

For these reasons, Minnesota continues to be at the forefront of modern data breach litigation. It is a good idea for all attorneys to know the basics—even if it is just as a consumer.

Notes

[1] 133 S. Ct. 1138, 1147 (2013).
[2] 136 S. Ct. 1540 (2016).
[3] These standing issues generally apply to consumers alleging harm. Financial institutions who file similar suits have not always faced these challenges.
[4] *See In re* Zappos.com,Inc., 888 F.3d 1020, 1023 (9th Cir. 2018), *cert. denied sub nom.* Zappos.com, Inc. v. Stevens, 139 S. Ct. 1373, 203 L. Ed. 2d 609 (2019).
[5] *See* 66 F. Supp. 3d 1154 (D. Minn. 2014).
[6] *See* 870 F.3d 763 (8th Cir. 2017). The Ninth Circuit in *Zappos* noted that this was not really a circuit split: "The Eighth Circuit did hold in *In re SuperValu, Inc., Customer Data Security Breach Litigation* that allegations of the theft of credit card information were insufficient to support standing. But no other personally identifiable information (PII), such as addresses, telephone numbers, or passwords, was stolen in that case. The Eighth Circuit acknowledged cases like *Attias* (in the D.C. Circuit) and *Remijas* (in the Seventh Circuit) but opined that standing questions in data breach cases "ultimately turn on the substance of the allegations before each court...particularly, the types of data allegedly stolen." *Zappos*, 888 F.3d at 1026 (citing *SuperValu*, 870 F.3d at 766, 769–72?) (internal citations omitted).
[7] *See* Minn. Stat. § 325E.64.
[8] *See In re* Target Corp. Customer Data Sec. Breach Litig., 64 F. Supp. 3d 1304 (D. Minn. 2014).

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Here's Looking at You, Kid

True story (facts changed to protect the unsuspecting attorney): *Lara Lawyer represented Em Tipockets in a contract dispute that became more complicated than anyone expected. Em paid an initial retainer of $5,000 but the final bill was over $15,000. Despite the good result she received, Em filed an ethics complaint about the bill and also alleged that Lara did not adequately inform her about what was going on in the case. During the investigation, the investigator learned that Em had paid part of the retainer in cash to one of the administrative staff.*

The complaint against Lara was dismissed. However, the owner of the law firm, Tina Toppe, received a private admonition.

"Huh?" you say? When a client pays a lawyer in cash, the lawyer must provide a receipt to the client that is signed both by the law firm and the client, to avoid disputes later about how much cash was paid. *See* Minnesota Rules of Professional Conduct (MRPC), Appendix I(6). The receipt given to Em had only the law firm signature on it. Even though there was no dispute over the amount paid and Tina had nothing to do with the case or the payment, the director's office disciplined Tina for —wait for it— a failure to supervise her staff because the law firm had no written policy about handling cash payments.

Supervision: There are two matching rules regarding supervision, one for supervising attorneys (Rule 5.1) and one for supervising non-lawyer staff (Rule 5.3). Those rules each set out two standards. If you manage a firm, you are obligated to make "reasonable efforts" to ensure the firm "has in effect measures giving reasonable assurance" that attorneys and staff comply with ethics obligations. If you supervise others, you must make "reasonable efforts" to make sure your subordinates comply with the ethics rules. In a small firm, the owners likely have both responsibilities.

If you're looking for guidance on what constitutes "reasonable efforts" or "measures," you won't find it in Rules 5.1 or 5.3, or in the comments to the rules. In fact, even the interwebs offer precious little by way of best practices for supervising subordinates, whether your goal is to ensure your firm operates in an ethical manner or just want to protect your own "bottom line," if you get my drift. Make no mistake (so to speak), you are not responsible for your employees going rogue, unless you knew they were flouting your rules and you failed to do something about it. To a large extent, avoiding discipline under Rules 5.1 and 5.3 is all about having processes and procedures in place. Which begs the question of how lawyers should supervise subordinates and what types of policies and procedures they should implement. The answers will vary by firm size and practice area, but these approaches provide a useful starting point:

Policies and Procedures: Document how routine tasks are supposed to be completed at your firm and combine them into a paper or on-line manual. Many of your operations can be standardized in this way: opening a file, processing checks, handling incoming mail, sorting and filing e-mail, calendaring deadlines, etc. Do not be afraid of detail, i.e. "1. Open the envelope. 2. Take out contents. 3. Date-stamp the first page. 4. Remove staples. 5. Scan contents. 6. Name file (*see* File-Naming Guide)." And so forth. Leave nothing to the imagination.

Case Lists: Unless you are working very closely with a subordinate attorney, such as a new associate, who sends all of their work directly to you, you probably need a system of generating case lists that are updated and discussed regularly, perhaps monthly. For each matter, the case list identifies what it is, the most recent work completed, the status, the next work that will be done, and when that work will be completed.

Deadlines: Separate from case lists, you may need a system of tracking deadlines in cases, along with a procedure document that explains who identifies the deadline and how it will be tracked. Options may include a paper calendar, a shared computer calendar, a function in your practice-management software, or a clever task-list app.

Trust Accounts: Although you should guard against theft, it is far more frequently the case that lawyers are disciplined because they failed to properly supervise the bookkeeper who handles the day-to-day management of the trust account, resulting inadvertently in missing funds. Bookkeepers can do a great job 98 percent of the time and still fail to correct a duplicate withdrawal, mistakenly deposit funds in the wrong account, or disburse too much on behalf of a particular client. Every month, the supervising lawyer should sign off on the bookkeeper's reconciliation, including the subsidiary ledger trial balance and a review of uncleared checks and deposits.

Teams: As a firm grows, there is no way one lawyer can supervise everyone. Departments, groups, and teams help larger firms divide and conquer the work.

Co-Owners: Supervision of your fellow shareholder(s) can be tricky. You're not likely to be able to compel them to maintain a case list that you review. Yet, you probably want some way of figuring out whether something is amiss. Policies and procedures by themselves probably will not cut it. Instead, try periodically rotating responsibility for the trust account and other managerial functions. Pay attention to your firm's metrics for case openings and closings, billable hours, and receivables. Recognize that open communication is key and that its opposite—secrecy—could be a red flag.

Supervision is difficult, non-billable, and thankless work. But it is critical to run an ethical firm and to avoid disciplinary surprises.

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by Jess Birken @JessBirken

I've had a few jobs as a lawyer, and I just have to say, I *love* being a solo attorney. I love that I can build my practice in a way that reflects me. Everything about Birken Law, from my website to my office décor to the way I interact with clients, reflects my values as a person and as an attorney.

There is a downside, though. When it's just you, you tend to try to keep everything in your own head. Plus, I'm always improving my practice or juggling client deadlines which means it's really easy to lose the thread of what's next. If I had a dollar for every time my wing woman Meghan or I say, "How are we doing X now?" or "What's the state standard for Z process?" I could retire tomorrow, seriously.

Introducing...Standard Operating Procedures

The solution? We record all our processes in Standard Operating Procedures (SOPs). Yeah that sounds BORING. But, instead of trying to remember what we did last time (or making it up as we go—again), we can refer to detailed, step-by-step workflows. It's sort of an old-school approach, for sure, but sometimes the simplest answer is the best one.

With SOPs, an idea is just an idea until it's included in the written SOP. When you write it down, you're kind of committing, so we're forced to think through new ideas before we incorporate them into our processes. Plus, and this is the best part, there's a source—other than my brain—to refer to when we inevitably forget a detail. Finally, there is nothing like writing it down to show how silly or redundant a process is, so it helps you streamline. It's a win-win-win.

Choosing the right tool

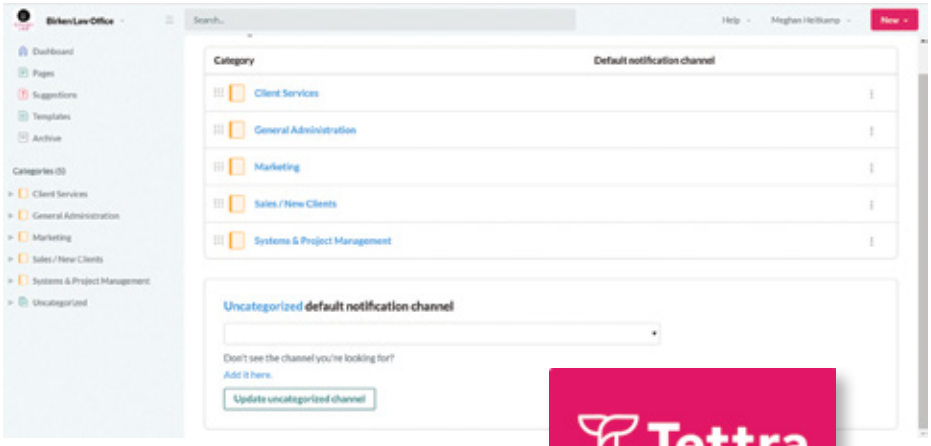
Having SOPs are only helpful if they're easy to access, use, and update. Whether you're a solo or working at a giant firm, I'm guessing you don't have the time or the patience to completely change the way you work in one fell swoop. You need them to work for you, and not overwhelm you. With that in mind, we looked at our options. We theoretically could just create a massive Word document (um... no). Lots of people create SOPs in Google Docs or OneNote, which are a bit better, since they are cloud-based. But will I really go dig through OneNote every time I have a question about our process? Probably not.

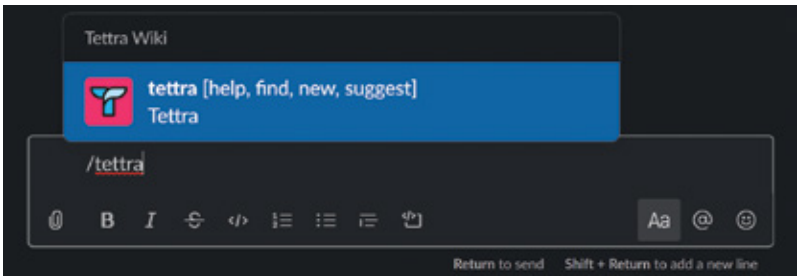
After a little research and a recommendation from another attorney, Ryan McKeen (co-author of *Tiger Tactics*) we decided on Tettra.

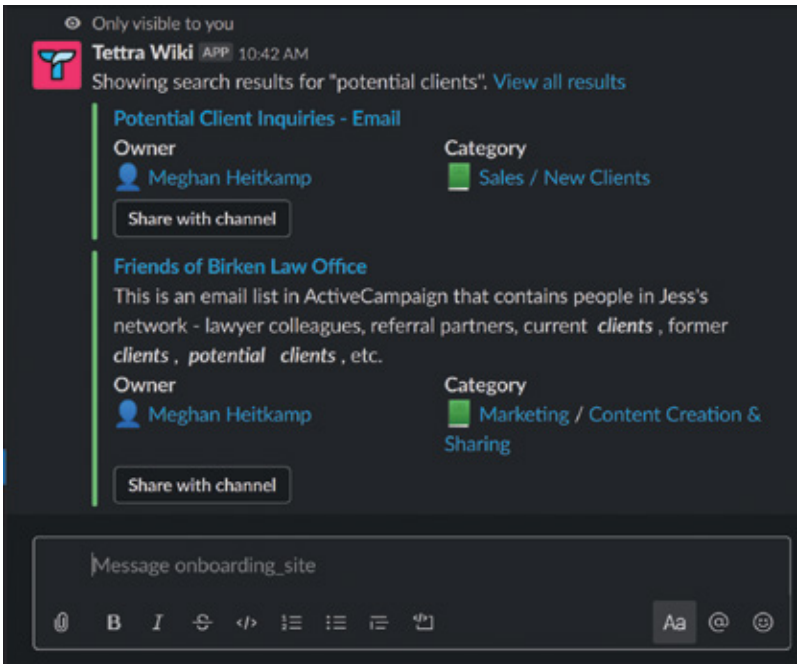
HERE'S WHY TETTRA IS A GREAT FIT FOR US:

1 It's intuitive and easy to use

This is a necessity. The whole point of creating SOPs is to make your life easier, so don't go with a complicated tool. In Tettra, we can just log in, click the "New" button in the top right corner, and we're off to the races. You can easily format your entry with headings, lists, links, and so on—no coding required. You can keep it all tidy and organized or just create pages at random. There's a search bar at the top, for when you won't be able to remember where you saved things, so don't sweat it.







2 It's cloud-based and integrates with other tools

Before I jump in with any tool, I need to know that 1) it's accessible anywhere, and 2) it plays nicely with my other tools. Tettra integrates directly with Slack (a great messaging app to keep your team communications out of email) and with Zapier.

The Slack integration specifically is what sold me on Tettra. Meghan and I are in Slack all day long and being able to access our SOPs from there is a game changer. When I want to check something specific in our SOPs, I don't need to open some file or even go to the Tettra site. Instead, I can type my search terms directly into Slack.

Plus, if we don't have that information in Tettra, I can suggest that we create a new SOP page right then and there. Or I can add a new entry, all from Slack.

For example, if I can't remember every step of our process for potential clients, all I have to do is type "/Tettra find Potential Clients," and I get the link to that SOP.

Trust me. This is worth it.
Your future self will thank me.

Jess Birken
jess@birkenlaw.com

When she's not helping lawyers use tech tools, Jess Birken is the owner of Birken Law Office—a firm that helps nonprofits solve problems so they can get back to their mission.

3 There are tons of other features beyond just housing our SOPs

The extra features are what separates Tettra from your thrown-together OneNote or Google Doc. There are *tons* of things you can do, like:

- Grant or revoke access to team members for specific entries or categories
- Collect suggestions from the team about what kinds of information should go in Tettra
- Assign those suggestions to a team member to create the entry
- Create various templates for any entries with similar sections or formatting
- And more!

I'm still discovering the power of this tool, but I can tell you it'll do more for you than jotting down workflows in a random Word document or printing checklists.

So what?

I realize that creating a SOP isn't a new idea. As a solo, though, it's super tempting to try to keep all the information in your head. But after working that way for a while, I can promise you it's not the most efficient way. More importantly, trying to hold all the info is stressing you out.

Do you get stressed out about being lost anymore? No, almost never right? Because you have a smart phone with GPS. That stress is eliminated. Same with SOPs and your tired brain. You have lawyering to do, use your brain power for the high-end thinking, not being a process Rolodex.

So, what are you waiting for? Start with the low-hanging fruit. Even if you haven't articulated it, I'm guessing there are some fairly defined processes in your practice. Create a free account on Tettra and document something simple. How to lock up the office at night, how to open a client file. Something easy to get started. Add one thing each day. There's no need to be perfect or do it all at once.

Trust me. This is worth it. Your future self will thank me.

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Events and Meetings

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JAN 13
HCBA/MSBA/RCBA CLE
Answering the Call – The Path to Wellbeing in the Legal Profession
1–5 p.m. at the Science Museum of Minnesota

JAN 14
HCBA Board of Directors Meeting

JAN 15
HCBF Board of Directors Meeting

JAN 16
Corporate Counsel CLE
Understanding Accounting and Financial Information for Attorneys
12 p.m.

FEB 11
HCBA Board of Directors Meeting

FEB 12
HCBA Member Social

MARCH 5
HCBA Bar Benefit

Civil Litigation Section
Effective Advocate Trial Skills Course

A seven-session CLE program

COURSE DATES
Jan. 29
Feb 5
Feb 19
March 4
March 18
April 1
April 18

Leaders Impacting the Nonprofit Communities (LINC)

COURSE DATES
March 12
March 26
April 2
April 23

Member News

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








Frederikson & Byron announces the hiring of seven new associates: **Lukas S. Boehning, Tash S. Bottum, Oliva E. Cares, Rachel Leitschuck Dougherty, Erin M. Edgerton, Jacob D. Levine, Charles J. Urena**. Attorney **Kayla C. Hoel** has also joined the firm.

Collins, Buckley, Sauntry & Haugh announces that **Mark H. Gehan** and **Amy Krupinski** were promoted to partners. **Charles R. Shafer** has joined as an associate.

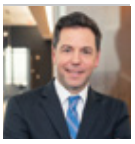
Greenstein Sellers is pleased to announce that **David Ribnick** has joined the firm as an associate.

Molly Nephew has joined Ogletree Deakins as an associate.

Hellmuth & Johnson is pleased to welcome **Heidi Bassett, Alex Mueller,** and **Katherine Herman** to the firm.







Stinson announces that **Emily Asp, Anne Marie Buethe, Logan Kugler, Kacie Phillips, Joshua Poertner, Zach Sheahan**, and **Jessica Wheeler** have joined the firm as associates.

Aaron Frederickson of MSP Compliance Solutions was selected to officiate in the Minnesota State High School League state soccer tournament.

Ryan T. Murphy of Fredrikson & Byron has been invited to become a fellow of the American College of Bankruptcy.

HONORING LAWYERS WHO PASSED AWAY IN 2019

The HCBA's Bar Memorial Committee requests your assistance in its efforts to memorialize Hennepin County lawyers and judges. Please inform us of any colleagues who have passed away in 2019 who should be memorialized at the 2020 Bar Memorial.

The 2020 Bar Memorial will take place on Friday, May 1, from 9:00–10:00 a.m. at the Thrivent Financial Auditorium in downtown Minneapolis. The Chief Judge of the Fourth Judicial District Court presides over this special session of the court.

Contact Sheila Johnson at sjohnson@mnbars.org with names of those to be memorialized. If you are interested in serving on the Bar Memorial Committee, we welcome your participation.

Get on Board with LINC!

Nonprofit Board Service Training Designed for Local Lawyers

Lawyers are often called upon to serve on nonprofit boards, and while they bring strong skills in many areas and the desire to make a difference, they often lack the background and formal training needed to contribute effectively as nonprofit volunteer leaders.

The Hennepin County Bar Association has developed the **LINC (Leaders Impacting the Nonprofit Community)** program to provide volunteer lawyers with training in nonprofit governance and an introduction to legal issues commonly faced by nonprofits.

The skills you acquire from LINC training will be applicable to positions of leadership on nonprofit boards and committees, including associations, faith communities, and community based nonprofits. The training will not only provide information that every person serving on a nonprofit board should know to uphold his or her fiduciary duties, but also an opportunity to focus on issues that uniquely impact lawyers serving on nonprofit boards.

Make this the year you join the LINC

LINC Leaders Impacting the Nonprofit Community

Now's the Time to Be Part of the LINC

The LINC program was originally created by the HCBA in 2005. It is offered every other year and over the last 15 years LINC has been honed into an engaging, thorough four-session program. This year we are trying something new and concluding the sessions with a one-hour "Ask the Lawyer" session with a panel of our experts. Make sure to keep track of any questions that weren't answered throughout the sessions, and bring any burning new ones.

This experience is meant for any attorneys that are curious to explore the potential of serving on a nonprofit board or for attorneys that already serve and would like to expand their understanding of the nuances that can be involved when serving as an attorney. Participants who attend all four sessions will earn a total of 10 (9 Standard, 1 Ethics) MBCLE credits.

Thanks to the 2020 LINC Co-chairs:

Ann Novacheck, Nilan Johnson Lewis PA

Emmett Robertson, Rubric Legal LLC

ENHANCE YOUR SKILLS • IMPROVE YOUR EFFECTIVENESS • IMPACT THE COMMUNITY

SESSION 1	SESSION 2	SESSION 3	SESSION 4
Thursday, March 12 *2:00-5:00 p.m.*	**Thursday, March 26** *2:00-5:00 p.m.*	**Thursday, April 2** *2:00-5:00 p.m.*	**Thursday, April 23** *2:00-5:00 p.m.*
• Nonprofit Corporate Governance/Role of a Board Member • Ethics of Serving on a Nonprofit Board	• Overview of the Law of Tax-Exempt Organizations • Restricted Gifts and Endowments	• Nonprofit Financial Literacy and Competency • Election Year Issues	• Employment Law for Nonprofits • Fundrasing • Ask the Lawyer

Join our distinguished list of LINC alumni

Attend all four sessions to receive the designation of ***LINC Graduate*** to add to your professional bio and resume.

Complete program descriptions and faculty list are available at www.hcba.org.

Programs take place at the HCBA office, 600 Nicollet Mall, #390, Minneapolis, 55402.

Contact Tram Nguyen at 612-278-6316 or tnguyen@mnbars.org with any questions.

HCBA members: $249 Non-members: $399

Register at www.hcba.org or call 612-752-6600

Registration deadline: Thursday, March 5

10 CLE credits

including 1.0 Ethics applied for

10 QUESTIONS

Brent Robbins

Vice President, Deputy General Counsel
GENERAL MILLS

1 What's your elevator speech?
I lead a group of talented legal professionals in managing risk and creating opportunities for General Mills' international businesses and supply chain organization. I also lead the legal operations group.

2 What's the most rewarding part of your job?
Solving complex practical problems that matter to the business.

3 Why did you go into law?
I thought the mix of intellectual rigor and practical focus would be a good fit.

4 If you weren't a lawyer, what would you be?
A small business owner or finance professional.

5 How do you like to spend your free time?
My family volunteers at our church food shelf and we have taught English for many years at a camp in Poland. For fun, I like to attend some of the Twin Cities' amazing classical music offerings and sporting events. I also get out hunting at least once a year and enjoy eating at our many great restaurants (favorites are Spoon & Stable and Restaurant Alma).

6 What's the best advice you ever received?
The best career-related advice was "Only do what only you can do" (especially for leaders). The best personal advice was "Don't be humble, you're not that great."

7 What book is on your nightstand right now?
Directorate S, the sequel to Ghost Wars and a must-read about the CIA's long struggle in Afghanistan.

8 If your life was summed up in 3 hashtags...
#keepitsimple, #loveothers, #followChrist

9 Do you have a New Years resolution or goal for 2020?
To be more intentional about downtime. We're just too busy!

10 Cheerios *or* Lucky Charms?

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2020 BAR BENEFIT

Our Annual Fundraising Gala

Thursday, March 5
5:00 - 7:30 p.m.

Lumber Exchange Event Center, Third Floor
10 South 5th Street, Minneapolis

An Exciting Night of Fun and Fundraising!
Silent Auction – Amazing Hors d'Oeuvres – Wine Toss
Mystery Prize Boxes – Great Networking & More

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Contact Amanda Idinge at aidinge@mnbars.org or 612-752-6614 with questions or regarding additional supporter opportunities.

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