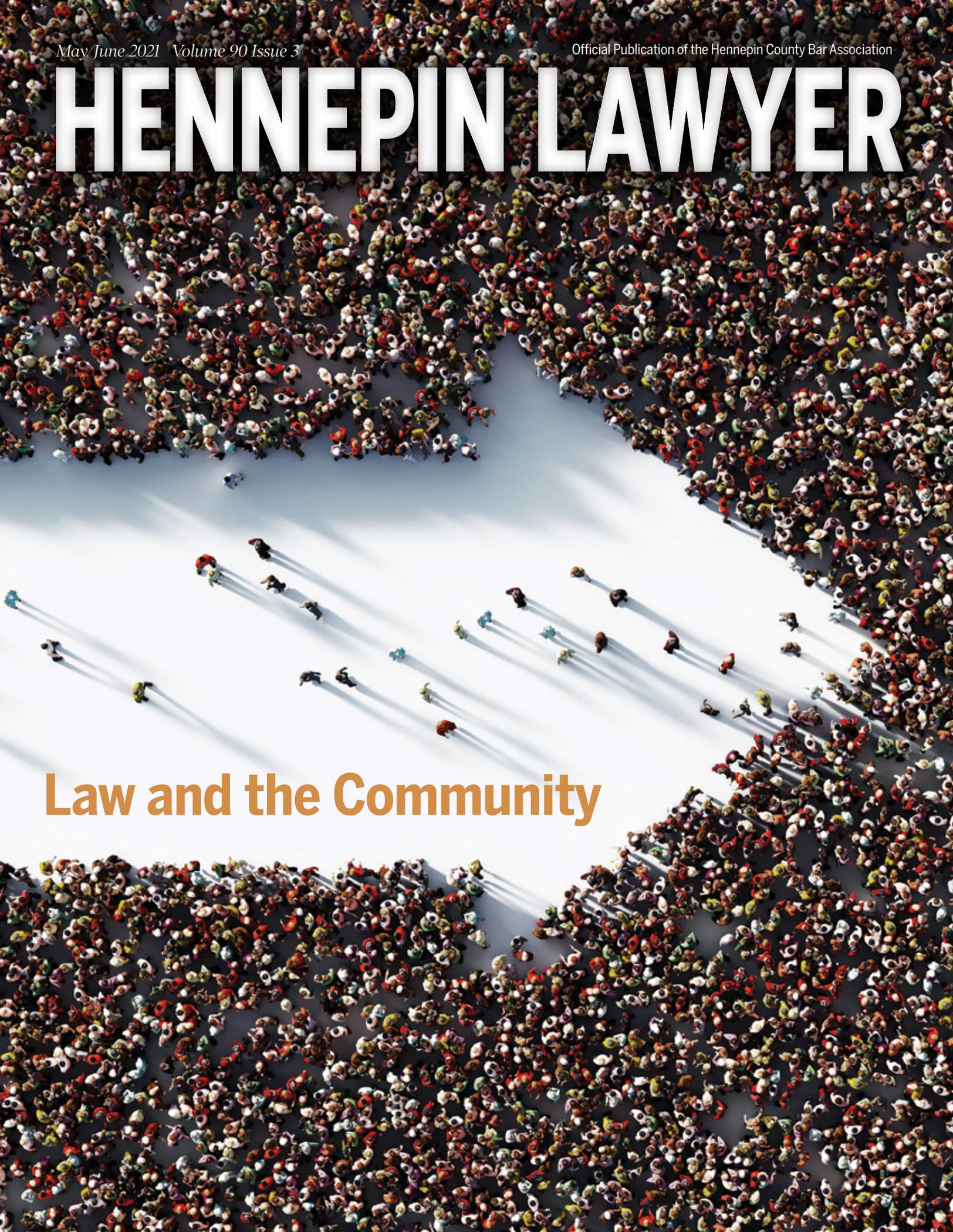


May/June 2021 Volume 90 Issue 3

Official Publication of the Hennepin County Bar Association

# HENNEPIN LAWYER

**Law and the Community**





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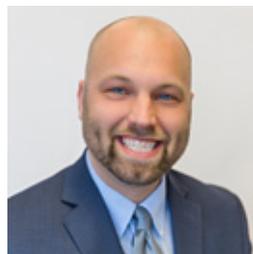
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# HENNEPIN LAWYER

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**May/June 2021**  
**Volume 90, Number 3**  
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# Our Role as Lawyers ...

**H**uman beings have developed an interconnectedness that is the bedrock of civilization. Our American judicial system is heavily influenced by European thinkers who philosophized that humanity entered a theoretical “social contract” in which humans created governments to “contractually” safeguard their freedoms and equality.

These ideals form the basis of our legal system, which shapes and perpetuates precedent. This philosophy means that the community shapes the law and vice versa. When proponents of social contract theory developed the construct, they seemed to ignore the fact that our society is not made up of people who are equally free in its eyes. This reality means that when there are power imbalances in the community, they are inherently reflected in the law. While most in our society may genuinely strive for equality, ignoring these inequities when applying laws to the community takes us further away from that goal.

The feminist philosopher Carole Pateman argues that while the social contract is the basis on which men have built our patriarchal society, the original social contract was a contract between men and women in which men collectively have dominated women (and non-binary individuals) in society. Jamaican-born philosopher Charles W. Mills also recognizes subjugation of women the world over, and in most societies, racial and ethnic subjugation—what Mills calls “the Racial Contract.” The Racial Contract, like the sexual and class contracts, is an agreement among the privileged to restrict moral and political equality to themselves, maintaining the subordination “out” group—this time, based on race or ethnicity. As you will read in this issue, you will find evidence that American law-making is rooted in such a contract.

These theories of social cohesion are not the only ones, however. Eastern and Indigenous

philosophers also endeavored to understand the phenomenon of human togetherness and social society as well. Indigenous philosophy theorizes the concept of “wholeness” wherein all things are interrelated, and we may only reach full understanding of the universe if we understand the interrelation of all things. This offers a fundamentally different philosophy about why humans commune: that it is in our innate understanding of the universe to commune. An Islamic philosophical perspective theorizes that it is our innate moral responsibility to care for, protect, and provide for one another that creates communities and, thus, society.

What truly connects us can be viewed from many different perspectives; however, one thing is clear: as our society evolves, the rules that govern our relationships evolve. Society evolves based on whose voices ring in the public square, whether they are heard, and whether there is will to act upon them. Sometimes, this evolution manifests in legal change, and it is in this act that we see the most dramatic evolution of society.

In this issue, the *Hennepin Lawyer* examines the role of the law in formulating the society in which we live and how responsive adaptation of the law occurs. Inspired by the murder of George Floyd, the advent of the COVID-19 pandemic, and the ensuing actions taken by citizens, lawmakers, and governments, this issue tackles several questions about the role of lawyers and the law in society. Natasha Phelps explores the declaration by many law-making bodies that racism is a public health emergency and how this declaration uses legal means to advance public health for all citizens. Kassius Benson, our county’s new chief public defender, describes how the Hennepin County Public Defender’s Office is responding to the needs of our community. Elizer Darris, Emily Hunt Turner, and John Goepfinger posit that the legal discipline would be fundamentally transformed for the better through the integration of previously-incarcerated individuals into the bar.

The Hennepin County Attorney’s Office gives us a glimpse into the programs that it has developed to respond to the evolving needs of the community. Aaron Fredrickson, Sarah Dannecker, and Sunny Beddow share how *pro bono* work in the community has changed in the face of the COVID-19 pandemic. And, finally, Judge JaPaul Harris examines how COVID-19 has led to an awakening about the injustices defendants face while they await trial.

Our role as lawyers in this society is to be the bridge between the “social contract” and the people it governs. We shape the parameters of the contract through law-making and judicial interpretation. We push and pull at its boundaries when we advocate for our clients in the courtroom or the conference room. We have a distinctive skill set that allows us to help others understand the inner workings of the rules and institutions that bind our society. In this role, we have the unique ability and solemn duty to act for the greater will, to move society forward, and to honor one another. Considering the shifting tides of the last year, there is no better time than now to examine our role in our society and renew our commitment to doing our work with integrity, honor, and a devotion to the greater good.



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May/June 2021  
Issue Editor

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Ms. Helmy works as counsel for Bright Health and teaches at the Mitchell Hamline School of Law and the University of Minnesota. She formerly worked in private practice and as an assistant Ramsey County attorney, advising and litigating on behalf of county agencies.

# Promoting Access to Justice

Attending the Bar Benefit event this year reminded me of the importance of charitable giving during these difficult times. A segment of our profession has been financially affected by the pandemic. However, the overall population and the less fortunate have undeniably been affected more. The need for free legal services has increased due to the inherited issues caused by the pandemic.

Participating in the Hennepin County Bar Foundation (HCBF) Bar Benefit was so wonderful because the proceeds benefit so many legal nonprofits across Hennepin County. It also was a great opportunity to mingle virtually with so many colleagues that I have not seen in months. The HCBF has a very important mission: promoting access to justice for the people of Hennepin County. The HCBF is the charitable arm of the HCBA and an important part of our overall mission.

I encourage all members to support the HCBF and there are several ways to do that. Members can donate, become involved in HCBF leadership (as a board member or on the leadership track), attend events, sponsor events, and/or become an HCBF Fellow. The Fellows program started three years ago and has become one of the most successful programs to support the foundation.

The Fellows are licensed attorneys who have been admitted to a bar for at least five years and have shown strong commitment to increasing access to justice in Hennepin County. Becoming a Fellow is an honor and a recognition within the profession (only 1% of HCBA members are nominated each year). Fellows are an esteemed group of local attorneys who are recognized by their peers for dedication and commitment for increasing access to justice. Fellows are asked to make a financial contribution over a period of five years. This commitment increases the ties between the Fellows and the Foundation and therefore has a longer and stronger impact in the

community. The HCBF Fellows program is also a unique way to build your professional network because Fellows are invited to exclusive events, such as the Bar Benefit's pre-reception and Fellows breakfast, among others. Networking with likeminded people allows you to have common ground and helps create lasting relationships and friendships.

Each year, the HCBF gives grants to local nonprofits that work to provide legal access and support to those in need. Last year, the HCBF gave out 25 grants to different nonprofits, including Volunteers Lawyers Network, The Advocates for Human Rights, Lawyers Concerned for Lawyers, Cancer Legal Care, Children's Law Center of Minnesota, Minnesota Elder Justice Center, Minnesota Justice Foundation, Minnesota Wills for Heroes, Discapitados Abriendose Caminos, Division of Indian Work, Immigrant Law Center of Minnesota, Tubman, and JustUs Health. As you can see from the listed nonprofits, the HCBF supports a wide array of legal causes and different segments of the population of those in need. Please go to [www.mnbar.org/hcbf](http://www.mnbar.org/hcbf) for more information on how you can support the HCBF's important work.

I hope you all are able to contribute to the HCBF to provide legal access and support to those in need to make this a better and more fair society. We should always remember that we are very fortunate to be lawyers and that we have the responsibility to give back to the less fortunate. I also hope we can see each other at the next Bar Benefit and other HCBF events in person when it is safe to do so.



**Esteban  
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2020-2021  
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Esteban A. Rivera is an attorney licensed in Minnesota and Ecuador. He practices mainly immigration and international law with emphasis in Latin America. He practices investment, employment, and family-based immigration law, as well as removal defense. He is very active in the local legal community and the local bar associations.



# 2021 BAR BENEFIT

*Our Largest Annual Fundraiser*

# Thank You

The mission of the Hennepin County Bar Foundation (HCBF) is “promoting access to justice for the people of Hennepin County.” The HCBF fulfills its mission by allocating grants to nonprofits in our community working to close the justice gap. In 2020, the HCBF granted over \$270,000 to 27 organizations in Hennepin County serving the underserved. Every March the legal community celebrates the work we’ve done, and fundraises for the work to be done, at our annual Bar Benefit.

This year’s Bar Benefit was held on Thursday, March 25. The Bar Benefit is not your typical fundraising event even during a typical year; there are no long speeches or chicken dinners. But this year has been anything but typical, and we held the Bar Benefit virtually. It was a fun day of networking and fundraising, featuring a presentation from Justice Barry Anderson, a comedic CLE by Joel Oster, and a cocktail/mocktail class with Meteor Bar. We also heard from HCBAs pro bono arm, Volunteer Lawyers Network and hosted a live auction to wrap up the evening.

Thanks to the generous support of our sponsors, attendees, and donors! Together we raised over \$117,000 for the HCBF, an incredible success considering the hardships of the past year. We are eager to donate these funds to organizations during our upcoming grant cycle. Our grantee organizations need our support now more than ever.

We thank each and every one of you for your continued support, and we hope to see you at the HCBF’s fundraisers in the future, including the September golf tournament. With your help, we will continue to serve the public by helping to bring justice for all.

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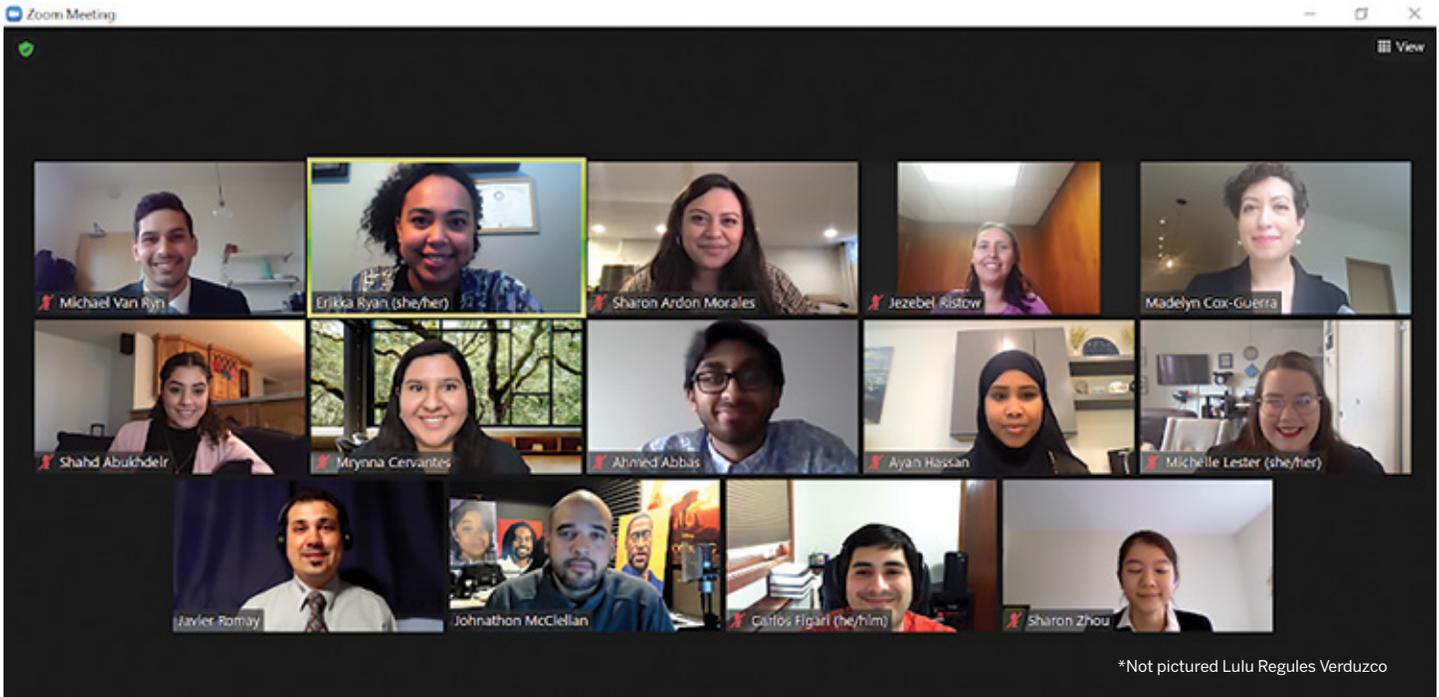
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# 1L Minority Clerkship

**T**he HCBA 1L Minority Clerkship Program first began in the fall of 2005. The program places first-year minority law students with Minnesota legal employers for a summer associate experience. Ultimately, the program hopes to find its participants becoming future partners and leaders in Minnesota’s legal community.

The 2021 summer session is the program’s 15th year, and more than 45 students applied and 15 students were placed with legal employers. The program has served hundreds of law students from underrepresented backgrounds since its inception.

Calling all employers: The Hennepin County Bar Association seeks employers to participate in the HCBA’s 1L Minority Clerkship Program for the summer of 2022. Past and current employers have included large and mid-sized firms, government agencies, and the County Attorney, Public Defender’s office, and the Fourth District Judicial Court.

## Thank you to our 1L Employers

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## Five Reasons Your Office Should Participate in the 1L Minority Clerkship Program

1. Clerks go through a three-part interview process that is designed to offer you a highly qualified law student
2. Expand your talent pipeline by introducing diverse perspectives into your practice
3. Obtain quality assistance on legal projects for a lower cost to your clients
4. Provide professional development opportunities not only for your summer clerk, but also for your attorneys and staff who supervise the clerk
5. Invest in the legal community at large by providing opportunities for diverse students

For more information on the program, contact Erika Ryan at [eryan@mnbars.org](mailto:eryan@mnbars.org) or 612-271-6321.

# Pro Bono at a Crossroads

*By Aaron Frederickson*

“People can be getting prepared now for work we know is coming.”



Countless Minnesotans continue to struggle with the after-effects of the COVID-19 lockdowns and unrest that followed George Floyd's death in Minneapolis. Among the populations coming to grips with the new reality are Minnesotans who cannot afford an attorney to access justice. Given these challenges, attorneys in Minnesota are at a crossroads when serving others and fulfilling aspirational goals in providing pro bono legal services.

Notwithstanding state and local bar associations' efforts to promote and encourage pro bono activities, the number of attorneys providing these free services to low-income families and individuals has been on a steady decline. According to Sherri Knuth, Minnesota State Bar Association Access to Justice Director, 2014 saw a peak in service hours related to Minnesota attorneys' pro bono activities. Since that time, there has been a 19% decline in service hours among attorneys in this state. While it is unclear what pro bono participation numbers were in 2020, Knuth indicated, "There will likely be some decline."

Notwithstanding the social and political turbulence over the past year, Knuth remains hopeful for attorney engagement in 2021. "There is a level of commitment by many lawyers that has continued through the challenges of the last year in terms of accessibility of clients and attorneys as to what needs to be done." Knuth continued, "There was an outpouring of attorneys supporting some of the work to help people who were impacted with civil unrest following the death of George Floyd."

The challenges of meeting with and accepting pro bono cases have been significantly hampered with government-imposed COVID-19 restrictions that limit attorneys' ability to meet their clients in-person. To meet these demands, Congress responded with the CARES Act's passage, which went beyond direct stimulus payments by including funds to promote legal access.

One such access point resulting from the CARES Act was installing legal kiosks that mainly assist tenants with housing evictions and other systemic racism issues such as poverty. "We have a disproportionate number of people of color—and women—especially in the housing arena who need help with their basic legal needs." Knuth continued, "Some attorneys feel very strongly in how they can help a make positive impact on these issues that have been created in these communities."

While these kiosks are in the process of being rolled out, Tom Walsh, executive director of Volunteer Lawyers Network, envisions a lot of promise for serving all people. He explained two models that will be placed in more public locations for quick touch screen interaction of essential legal services. The other model will be essentially a workstation with a computer screen, web camera, printer, and scanner. This model will be located in more private locations such as a conference room. Users will be able to interact with attorneys and attend court hearings.

### Addressing the Housing Crisis During COVID-19

One of the challenges pro bono attorneys and advocacy programs have faced is the homeless and housing crisis. The Minnesota Assistance Council for Veterans (MACV) is a homeless veterans advocacy group with the mission of removing obstacles and providing housing security. According to Sara Sommarstrom, VetLaw Director for MACV, the global pandemic has significantly impacted its ability to provide free legal services.

Before government-imposed stay-at-home orders, MACV operated monthly law clinics at the Minneapolis Veterans Affairs hospital and other government centers around the state. A majority of the clients served were veterans and active-duty military personnel seeking legal services. In 2019, MACV served over 2,400

veterans. "With the shutdown of legal clinics, it created a huge change in our service model. We were not able to do our in-person events anymore," said Sommarstrom. "Usually, we would see between 85 to 100 veterans per clinic. Losing that [in-person clinics] as a resource changed our service model."

Under MACV's current model, Sommarstrom and staff counsel Walter Burke will speak with any veteran inquiring, generally over the telephone or email. Notwithstanding the loss of volunteers, they served over 1,700 clients in 2020. "One of the things we miss the most is that the clinics were an outlet where veterans could bring their paperwork, and we could get assistance in screening the case," said Sommarstrom. "A lot of work has to go into screening a case before putting it with a pro bono volunteer. One of the challenges has been the time consideration in leveraging pro bono on a case-by-case basis."

MACV also serves as a landlord in some situations to provide housing for homeless veterans. Sommarstrom explained that MACV has partnered with like-minded attorneys to develop policy guidance for the legislature to include a "statutory off-ramp" that will limit the number of housing evictions that can proceed once restrictions are lifted. "We are now trying to get as many of our folks into permanent or transitional housing options to leverage having them in one place to work more intensely on housing stability issues," said Sommarstrom.

The reduction in COVID-19 cases statewide does present a host of different problems for MACV. According to Sommarstrom, "The nightmare is the eviction moratorium ends abruptly and all the landlords who have not been getting their full rent rush the court system." She continued, "How do we find veterans? Their veteran status is not in the summons. Is there a way to identify people in the 87 counties?"

**“This program allows attorneys to be first responders just like in the healthcare field and other essential workers.”**



**LAWYERS STEP UP  
FOR MINNESOTA**

## A Call to Action – How You Can Get Involved

Providing free legal services to low-income community members is an aspirational goal for members of the bar, based on the unique role attorneys have in society and the court's officers. Attorneys can use pro bono service as an opportunity to be more fully engaged within the bar and with the people we serve.

Notwithstanding the decreased offerings of in-person pro bono clinics and other offerings, there are many ways for attorneys statewide to get involved in pro bono efforts.

It has to start at the top. Law firms and corporate leaders should engage and challenge the attorneys in their offices to embrace pro bono legal opportunities.

Take action now. Although there are limitations in meeting clients directly, legal service organizations are waiting for you to reach out.

Engage people in your community. Taking to the streets, but more importantly, helping clients in the courtrooms will make a difference.

“Paying attention is important,” said Walsh. “We had a lot in interest and continue to have a lot of interest in pro bono work. There are things like eviction moratorium, and some of the work

we do in that area is on hold at this point. Once things start to loosen up, things will move very quickly.” Walsh continued, “People can be getting prepared now for work we know is coming.”

All attorneys in Minnesota can prepare to assist in pro bono legal work by becoming familiar with the Lawyers Step Up for Minnesota campaign that the Minnesota State Bar Association launched in late March. The program seeks to streamline the process to connect attorneys with a legal aid program that utilizes pro bono volunteers. These organizations provide their volunteers with resources and mentorship to be successful in legal advocacy. According to Knuth, “This program allows attorneys to be first responders just like in the healthcare field and other essential workers—step up and take a role in helping our communities.”

Walsh echoed these comments. “Support can come in many ways. One way is pro bono legal work and volunteering.” Walsh continued, “Another way is financial support for VLN and other legal service organizations. It is crucial because these groups face a lot of funding and other pressures.”

Attorneys who participate in the Lawyers Step Up for Minnesota initiative ([lawyersstepupmn.org](http://lawyersstepupmn.org)) will receive recognition from the MSBA and judicial branch.



**Aaron  
Frederickson**

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Aaron Frederickson is the founder of MSP Compliance Solutions, based out of Minneapolis/St. Paul. He has nearly two decades of legal practice experience in workers' compensation, personal injury, and Medicare/Medicaid compliance. He has also been certified as a North Star Lawyer since 2016.



[LawyersStepUpMN.org](http://LawyersStepUpMN.org)

# The Pro Bono Experience

with Sonja “Sunny” Beddow and Sarah Dannecker



Just over a year ago, the coronavirus pandemic changed many facets of life as we all know it. For the legal community, that meant pro bono work rapidly changed in scope, scale, and delivery. Here, Ballard Spahr associates Sonja “Sunny” Beddow and Sarah Dannecker spoke about how their pro bono work has adapted and what they see for the near future of pro bono work as a whole.

**Sarah Dannecker:** You’ve handled pro bono work for several years now. How have you seen it change due to the coronavirus pandemic?

**Sunny Beddow:** It’s obvious to state, but the biggest change is that everything has gone virtual. All of my interactions with clients now are either by phone or by video, for the most part. I’ve met a few pro bono clients in-person, but even that is different—it’s different to have to meet outside and wear a mask.

Saying it’s “different” doesn’t mean it’s all bad, though. I represent two separate clients in the foster care system, so we have a review hearing every 90 days. It took the court a little while to get off the ground with virtual things, so we had status conferences via written submission for a few months. Virtual court hearings certainly have their downsides—there are technology issues at times, and they’re not nearly as personal—but in some ways, it has been nice. With one of my clients, it would have been much more challenging to have him come in person. It’s a very intimidating process for a 13-year-old, so to have to avoid the formality of an in-person hearing has actually been good for him.

I also do some conciliation court refereeing for Dakota County. That is also virtual, and the biggest struggle with that has been that it took time to get things up and running virtually, and so there’s a backlog. That’s been a stressor for the court.

How about you? Have you seen issues in your pro bono practice?

**Sarah:** I definitely can relate to some of the challenges. I’m currently representing a client with an eviction expungement, and right now, we don’t know if the hearing will be in person or virtual. Either way, it will be a new experience for me, so it’s been a little harder to prepare. I’m also helping a nonprofit corporation shift from a 501(c)(7) to a 501(c)(3). They needed to hold a virtual meeting and had never done that before, so they leaned on me for advice in that regard. It was a challenge we had to work through together.

Have you noticed the clients needing pro bono assistance changing, the work itself changing, or both?

**Sunny:** I think definitely both. I worked with a small business client negotiating some rent abatements with their landlord, and they had a double whammy because their business is located on Lake Street and they had some damage from the protests last summer. And I know in the immigration world, there was a huge influx of work that came in when the pandemic began because it became critical to get people out of detention when they were at

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Sunny Beddow, a real estate associate, and Sarah Dannecker, a business and transactions associate, are both Gold members of Ballard Spahr’s Pro Bono Honor Roll, meaning they contributed 50 hours of pro bono service in 2020.

serious risk for contracting the virus. I know there were a lot of lawyers taking on cases to get parole requests, and a step beyond that, to due *habeas corpus* petitions. I represented a client who had been detained by ICE and his removal had been granted, but ICE was holding him in custody pending appeal. He's HIV+, so he was at particular risk, and there were policy decisions and court opinions saying ICE needed to release people like him, but ICE hadn't followed through. We were able to get him released, which was potentially life-saving for him. I only did one of those, but I know there are so many more to do.

I think a lot of attorneys who work in the housing sector are wondering what will happen when eviction moratoriums across the country are lifted. There's a concern that the influx of eviction proceedings will overwhelm the volunteers and resources available.

When the pandemic first started, there was a slowdown in my practice area, and because Ballard Spahr is very supportive of pro bono work, I used a lot of that capacity to take on new matters. That lull is over, as I would guess it is in a lot of areas, so I wonder what's going to happen as capacity tightens up again. The need isn't lessening, but the support might be.

**Sarah:** That's one of the reasons I enjoy pro bono work too, for sure. You can gain experience in a totally new practice area. In your experience, has it been more challenging to do pro bono work in a remote environment?

**Sunny:** It's harder to create a bond with a client when you do everything virtually. For me, it's been challenging with my Children's Law Center

clients and asylum clients. Those are attorney-client relationships that really require the creation of connection and a relationship of trust, and it's really hard to do that when you never interact with them in person. Even with virtual interactions, it's hard to build rapport. I think it takes more time and a lot more concerted effort.

Related to that, it's challenging to have a difficult conversation with your clients if you need to do it virtually. It's hard to say, "We know you want this result, but it isn't something we're going to get." It's hard to talk about that on the phone. You can't gauge their emotional response and alter your follow-up. I have found that to be really challenging. I give all the credit in the world to all the pro bono clients I work with for being so adaptable. Even in really hard circumstances, they understand this is the reality of the situation and that we have to keep going.

**Sarah:** Do you think the help that attorneys can provide remotely is as effective? That is to say, has the coronavirus pandemic made providing pro bono assistance more difficult?

**Sunny:** I think it's making pro bono assistance more difficult, for sure. Some forms of pro bono work lend themselves very well to remote assistance—like what you've done preparing corporate forms—but not all of them. Work representing individual people, for me, is harder to do remotely. I would also guess that, for types of pro bono provided in a clinic format, it's a lot more challenging to be similarly effective.

**Sarah:** Do you think the shifts we've seen in the way pro bono work is handled and who needs it are likely to be permanent?

**Sunny:** I hope not. Eventually, lawyers and clients will go back to wanting to meet face-to-face and build the relationship that is so important in pro bono work. A lot of the clients we're working with have never worked with a lawyer before. They have no concept of what the relationship is supposed to be, so you're creating that. You need to show them how the relationship is meant to go. Face-to-face will never be replaced in that kind of situation.

That being said, the infrastructure we're creating might help us innovate more. We're figuring out virtual reach, and I can see that being a very effective tool for connecting with some underserved communities. For example, if we refine this virtual, remote-only process, it might be really useful for people in greater Minnesota who were difficult to reach before. That would be a very significant step for advancing access to justice.

What about you? Do you think your pro bono practice will stay similar or change back?

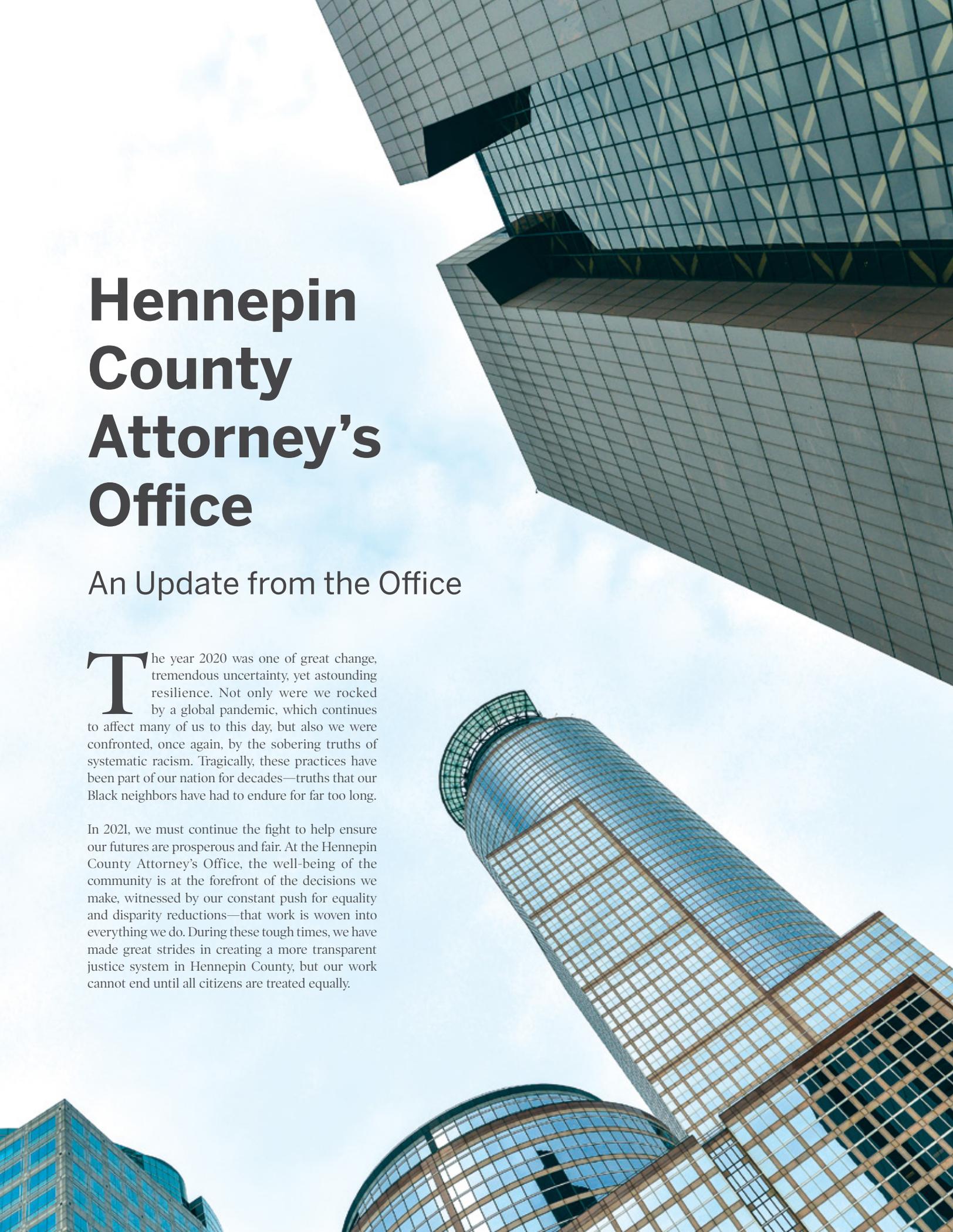
**Sarah:** I have a little bit of the pre-pandemic experience and a little bit of the post-pandemic experience. I have one client, a DACA recipient, whom I was able to meet in person. The client I am helping with the eviction expungement I have not yet met in person, and I hope to have that chance eventually. Once we've crossed the line and gone on to the other side of COVID, that's something I really look forward to.



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# Hennepin County Attorney's Office

## An Update from the Office

**T**he year 2020 was one of great change, tremendous uncertainty, yet astounding resilience. Not only were we rocked by a global pandemic, which continues to affect many of us to this day, but also we were confronted, once again, by the sobering truths of systematic racism. Tragically, these practices have been part of our nation for decades—truths that our Black neighbors have had to endure for far too long.

In 2021, we must continue the fight to help ensure our futures are prosperous and fair. At the Hennepin County Attorney's Office, the well-being of the community is at the forefront of the decisions we make, witnessed by our constant push for equality and disparity reductions—that work is woven into everything we do. During these tough times, we have made great strides in creating a more transparent justice system in Hennepin County, but our work cannot end until all citizens are treated equally.



**"Change takes time, but we will work on progressive change every day. We are resolute in our belief that justice should not be a privilege; it should be a right, accessible to all."**

## Our Mission

Our office is founded on justice. While the interpretation of the word may vary from person to person, to us, justice means fairness and integrity. It means doing what is right, despite the obstacles. It means protecting the victims of crime and witnesses to crime. It means creating a work environment that is diverse and inclusive, one representative of the community we serve, and one that pushes the office toward a more just future.

We are ethically and morally bound to and by justice. And in order to better the lives of those around us, we must adapt, listen, and change, and be transparent in the process. The following undertakings show how we have begun to do that.

## Expungements

In the fall of 2020, our office implemented new initiatives, through both the establishment of an online expungement tool and a new "how to" video designed to ensure residents with criminal convictions who have completed their sentences have access to the systems available to seal their criminal records.

Sealing a criminal record can make it a lot easier for people to find employment and housing and increases their access to education. These are the people in our community who have served their sentences and deserve a second chance at being productive members of society, like Hennepin County resident and employee Marlon Darden:

"If you change who you are, they can't help but to change how they see you," Darden said. "My message to anyone who may be stigmatized due to a past crime is don't get discouraged. Move forward . . . because you determine your own destiny."

These expungement initiatives are in partnership with the Ramsey and Washington County Attorney's Offices, and the Minnesota Attorney General's Office.

## Bail Reform

At the beginning of 2021, our office built upon previous bail reforms by eliminating cash bail for a select 19 low-level, nonviolent felony offenses, ranging from fifth-degree narcotics crimes to damage to property and mail theft.

Washington County Attorney Pete Orput and Minnesota Attorney General Keith Ellison support this new Hennepin County policy and say there need to be conversations about bail reform throughout Minnesota.

Our website ([www.hennepinattorney.org](http://www.hennepinattorney.org)) contains the full list of crimes for which bail is no longer requested in Hennepin County.

## Diverse and Inclusive Workplace

The Hennepin County Attorney's Office has also incorporated initiatives that create a more diverse and inclusive workplace. We have developed a broader hiring pool by expanding our recruitment efforts to the broader community. We consciously promote those who show true leadership skills. Of our 10 most senior managers, seven are women and four are people of color.

Our law clerk program is perhaps our finest example of championing a diverse workplace and it has yielded meaningful results. For the past three years, our rate of hiring diverse law clerks reflects our diversity hiring goal of 50 percent. Having a diverse group of law clerks provides us with a deep pool for future attorney hires.

Race and equity workplans have been developed by all divisions within our office, and they are continually being updated to reflect new ideas, objectives, and goals. This ever-expanding, working document is a tangible example of our office's dedication and commitment to building a stronger community, and creating equal opportunities for all regardless of race, gender, creed, sexual orientation, or age.

Our new diversity and inclusion director is working together with Hennepin County administration and other external groups to coordinate all of our diversity and inclusion efforts. We believe this will be a critical next step to improving our internal and external work on diversity and inclusion.

## Community Outreach

In a world that has gone virtual for nearly all forms of social interaction, members of our office, specifically those in our Community Engagement Unit, have brainstormed creative and innovative ways to reach the community during these challenging times. A prime example of this is through a retooled National Night Out. National Night Out has traditionally been a major event for our office. It's an annual opportunity for us to go out into neighborhoods and to connect with the residents of Hennepin County, to listen to their concerns and ideas, and to share what our office is doing to help. On average, more than 60 percent of our staff members participate in the event each year.

Unfortunately, in 2020, COVID-19 did not permit us to go out and be with the community in-person. Instead, our office used social and digital media initiatives to connect with the community through a series of planned posts.

These posts, published throughout the month of October were focused on helping community members in these difficult, unpredictable times. We did this by creating and posting informational content, such as a video series on scam prevention during COVID-19, and a video explaining the implementation of the new expungement program. In doing so, our National Night Out social media campaign was able to connect with and reach more than 16,000 people virtually.

Aside from that specific event, our office works daily on ways to interact with the community. During the pandemic, we have hosted and participated in numerous virtual community events and presentations. This new approach

to community outreach has proved to be quite successful, affording our office the opportunities to still engage with the public despite the uncertainty. If you are interested in having a virtual speaker from our office, there's a form on our website you can complete.

## Multilingual Messaging

In our office's external communications to the community, we have implemented more multilingual messaging to reach a broader audience. Our recent video on scams surrounding COVID-19 vaccines can be found in four languages: Spanish, Hmong, Somali, and English. They are all distributed across our digital and social media platforms.

Our continued effort to connect with all community members in Hennepin County is incredibly important to ensure they receive relevant and accurate information and that we receive needed feedback. Multilingual

messaging is at the forefront of that effort, and we will continue to explore ways in which we can best deliver content to the diverse community that comprises Hennepin County.

## Our Website

To best inform the public, we offer information on our website about current cases our office is working on. There, residents can also find the latest news on what cases we have charged and their status, as well as visit our Data Dashboard to get a breakdown of the cases presented to our office. This dashboard has key information on criminal trends and tracks the successes achieved by our reforms.

## Going Forward

The unique challenges presented in 2020, in turn, have created unique solutions. Our office and staff like so many others throughout the country have developed new skills and initiatives

to address issues plaguing our society. And though we are proud of the achievements the office has made over the years, we know there is still much work to be done—and we are eager to do it.

We will continue to develop new initiatives, reforms, and plans to address diversity, equity, and inclusion; to work with our community partners to ensure justice is met for all; and to endeavor through expansion of our goals of transparency and accountability to reflect justice in everything we do.

Change takes time, but we will work on progressive change every day. We are resolute in our belief that justice should not be a privilege; it should be a right, accessible to all.



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# Perspectives From the Chief Public Defender

## Impact of 2020 Events on the Practice of Law in Hennepin County

*By Kassius O. Benson*

**2020** was a challenging year. First, the COVID-19 pandemic descended upon the world requiring shutdowns of large parts of the government, schools, and court systems. Then, in the spring, the recorded killing of George Floyd by Minneapolis police officers led to social unrest, protests, and a refocus by many on the systemic racism and injustice that permeate our country.

These dual events of 2020—the global pandemic and the social unrest after the killing of George Floyd—have presented unique challenges as well as exposed persistent problems within our criminal justice system. Although horrible, the tragedy and trauma of the last year have presented opportunities for public defenders to remember why we do this work and whom we serve, renew our efforts to represent the clients we serve to the fullest, and rebuild trust with the communities that we serve. The events have presented an opportunity for the Public Defender’s Office to grow as an organization as we continue to fight for our clients.



**"This self-reflection should not be limited to judges, prosecutors, police officers, and juries. Public defender offices must also reflect, contemplate, and account for their role in this system."**

### Adjusting to Life with the COVID-19 Pandemic

One significant change to court systems in response to the pandemic involves the use of remote technology for court appearances. Due to the need to avoid large gatherings in response to COVID-19 concerns and protocols, court systems and defenders' offices throughout the nation have used Zoom or Microsoft Teams software to handle court appearances and communicate with criminal defendants. In some systems, this remote technology has largely taken the place of in-person contact. As the vaccine rolls out and we look toward the future, conversations are being held regarding how remote technology can be used going forward. The "convenience" of this remote technology, if used indiscriminately, will present a problem for our office, and other defender offices, in the way we stay connected, provide quality representation, and zealously defend our clients.

The Hennepin County Public Defender's Office prides itself on client-centered representation, which means different things to different agencies. Here, however, we believe that our in-person interactions with our clients are of utmost importance. Being available and present to stand next to our clients at an in-person proceeding is critical to such representation. Having contact with our clients as we explain their legal situations and potential consequences is vital to quality representation. Going forward, as the pandemic hopefully recedes, our office will be pushing against the routine use of remote technology to the extent that it prevents in-person appearances and encourages unnecessary distance between our attorneys and our clients.

### Striving for Positive Change in the Aftermath of the Killing of George Floyd

The tragedy of George Floyd's death at the hands of Minneapolis police officers sparked renewed debate and conversation about the criminal justice system and what we can do as attorneys within that system to create real, lasting change. Because our clients are largely people of color, we at the Hennepin County Public Defender's office regularly, if not daily, encounter the issues of police brutality, racism, and a fractured criminal justice system.

As public defenders, we are intimately involved with the criminal justice system. We have witnessed firsthand how our clients, predominantly people of color, have been unfairly treated within that system. We have been eyewitnesses to jury pools that frequently lack any people of color. We have witnessed decisions by courts and prosecutors that have racially disparate impacts on the clients we serve. And yes, even before George Floyd, we and the nation have repeatedly witnessed the killing of African American men and women at the hands of police officers. As members of the criminal justice system, we see firsthand the ardent need to make changes to the way we do business.

All the above is true and undeniable. In the wake of the events of the past year, attorneys and other members of the criminal justice system should take this renewed opportunity to come together and examine ourselves. We must reflect on the part we have played in this system as well as what we can do to better confront racism and inequality.

This self-reflection should not be limited to judges, prosecutors, police officers, and juries. Public defender offices must also reflect, contemplate, and account for their role in this system. As public defenders, we are duty-bound to zealously represent every client. Public defenders are also susceptible to implicit biases that permeate the rest of the criminal justice system, and that is particularly concerning given the disparate number of clients of color in our offices. While we encourage the other members of the criminal justice system to make changes in how they treat and provide services to people of color, defenders must review, correct, and improve the services we provide as well.

On January 1, 2021, I began my term as chief public defender of Hennepin County. I found an office full of excellent attorneys and support staff who are dedicated to representing our clients to the fullest. However, I have also found a lack of diversity within the office. The refocus on issues of race, diversity, and community in the year since George Floyd's death has provided an opportunity to focus on this lack of diversity and address it. As part of this effort, our main initiatives over the next year include increasing diversity and inclusion in our workplace; establishing true, honest, and open relationships with the people and communities we serve; and providing a forum for our clients and staff to express their concerns. These measures will provide information that will lead to sustainable change in the way we deliver and obtain justice to our clients.

The last year of 2020 has left lasting tragedy and trauma for our entire country. The dual events of the global pandemic and the death of George Floyd, though tragic, have provided an opportunity for reflection and action. I am proud to say that the attorneys and staff at the Hennepin County Public Defender's Office will take this opportunity to evaluate where we are as an agency and to make changes to better serve our clients and our communities.



### Kassius O. Benson

*Kassius.Benson@hennepin.us*

Mr. Benson is the chief public defender for the Hennepin County Public Defender's Office. Prior to the start of his first term on January 1, 2021, he was the owner and Senior Counsel at Kassius Benson Law, a law firm focused on the criminal defense of individuals charged with crimes in state and federal courts throughout the country. He is board certified as a Criminal Law Specialist by the Minnesota State Bar Association.

# RACISM AS A PUBLIC HEALTH EMERGENCY

*By Natasha Phelps*

## Jurisdictions across the country are declaring racism as a public health emergency.

We are in a public health emergency. Racism—on a structural, institutional, interpersonal, and personal level—does not only result in trauma, lower quality of life, disease, injury, and death in a myriad of devastating ways for Black people, Indigenous people, and other communities of color (BIPOC).<sup>1</sup> It is also detrimental to society as a whole. Racism is expensive and unjust. It stunts our innovation, hurts our economic well-being, and leaves our democracy and national security vulnerable. It is an illness that plagues the United States and is detrimental to public health.

Although racism has been a public health issue for centuries, many jurisdictions across the country are now recognizing racism as a systemic public health crisis that can no longer be ignored. This recognition is a response to the pressing issues of this past year. From the global COVID-19 pandemic, catastrophic weather events, and domestic economic strife to the civil unrest following the murder of George Floyd, the most discussed issues of the past year have been substantially caused and exacerbated by racism. The culmination of these events has resulted in enormous health disparities for BIPOC communities. These disparities are unsettling to many and costly to all, especially when it comes

to our public health. The leading cause of health disparities is not race itself, but racism. As a result, many jurisdictions across the country, including state and local governments in Minnesota, are declaring racism a public health emergency and resolving to address historical, deeply embedded racism in laws and systems.

### What is public health and what does race have to do with it?

Health is more than our individual behaviors (e.g., diet, exercise, substance use, and sexual activity). It is also more than the decision to go to the doctor or even an individual's access to quality health care. Individual health and the health of society are impacted by a person's individual ability to make lifestyle choices, as well as social, economic, and environmental conditions of society. This holistic understanding of health makes it possible for us to effectively address public health issues facing individuals, small and large communities, and the country overall.

Public health is the science and practice of assessing, protecting, and improving the health of entire populations, subpopulations, and individuals within communities. The public can reach its full potential for good health when the entire population, including subpopulations within the overall population, has the same

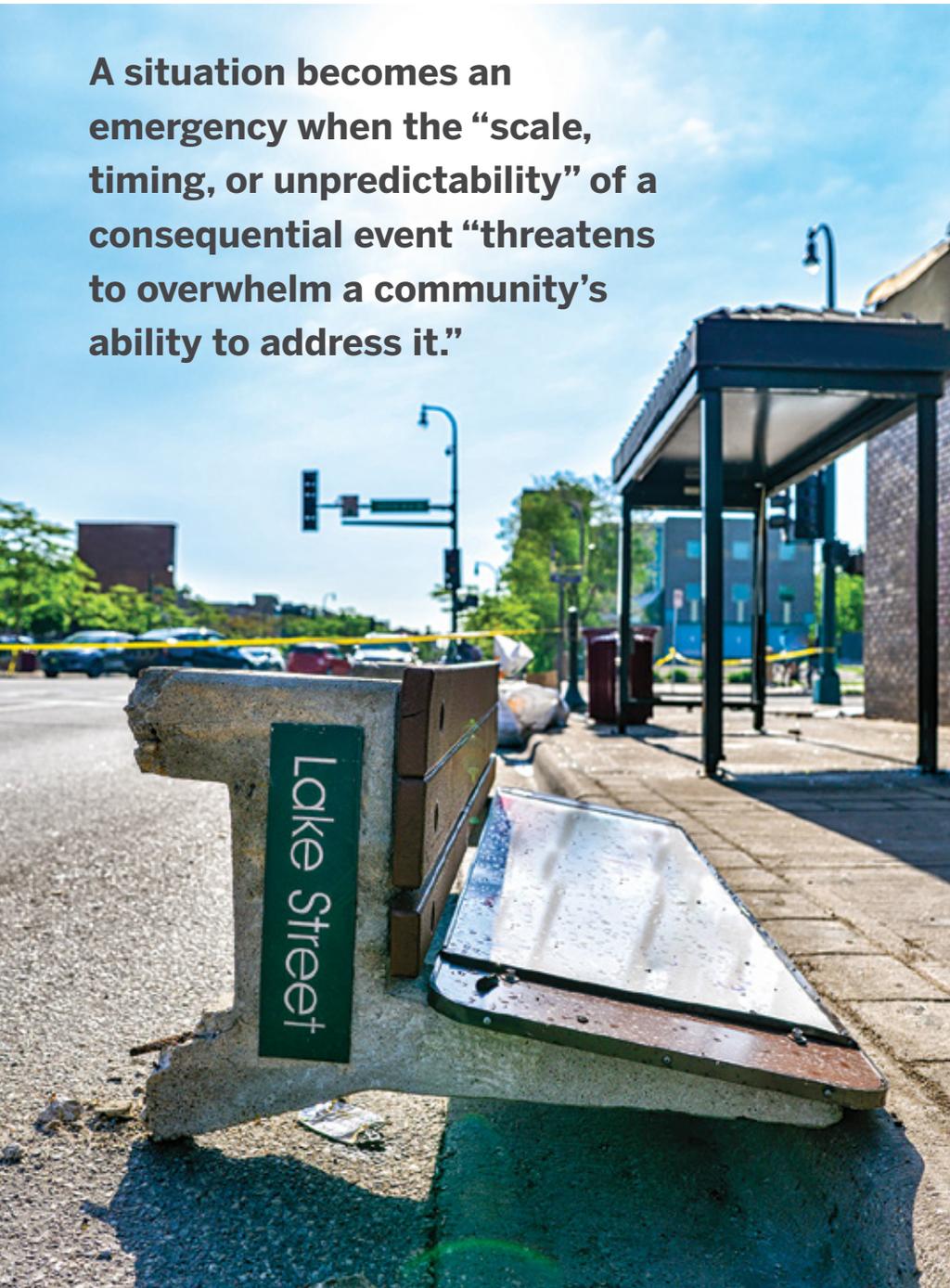
potential to reach good health. Populations do not currently have the same potential to reach good health. Equity is the vehicle in which we can strive to achieve equality. To improve public health (equal potential) is to advance health equity (addressing inequality). Dr. Paula Braveman defined health equity as “the highest possible standard of health for all people and giving special attention to the needs of those at greatest risk of poor health, based on social conditions.”<sup>2</sup> Health equity is achieved by identifying, reducing, and eventually eliminating the social, economic, and environmental conditions that disproportionately face marginalized communities and create “obstacles to health such as poverty, discrimination, and their consequences, including powerlessness and lack of access to good jobs with fair pay, quality education and housing, safe environments, and health care.”<sup>3</sup> These social, economic, and environmental conditions can be referred to as “the social determinants of health.”

Health inequities, then, are health disparities among groups of people within a population that are avoidable, unfair, and unjust. Health inequity explains why some people are healthier than others and why some people generally are not as healthy as they could be. To illustrate health inequity in any population, one could assess life expectancy based on the social determinants of health between subpopulations.

# NCY



**A situation becomes an emergency when the “scale, timing, or unpredictability” of a consequential event “threatens to overwhelm a community’s ability to address it.”**



Take Minnesota, for example, which is often hailed as one of the “healthiest states in the nation,” but is home to some of the worst health inequities in the country. How long a person born in Minnesota can expect to live varies dramatically based on their race, along with associated determinants of health. As a case in point, a baby born and raised in the 55411 ZIP code of North Minneapolis is likely to live almost 10 years less than a baby born and raised in the Bryn Mawr neighborhood of Minneapolis—just two miles apart from one another.<sup>4</sup> Examples of health inequity can be obscure or abundantly obvious, but one thing is clear—the health of

an entire population is ultimately only as good as the health across subpopulations.

While all forms of oppression and marginalization negatively impact health, racism is the foundation and strongest driver today of health inequity in the U.S. It is not only an aggravating factor of all the negative social determinants of health but also is, in and of itself, a social determinant of health. In other words, racism causes disparate social, economic, and environmental conditions that impact health and the actual, personal experience of racism also negatively impacts health. There is an

abundance of evidence demonstrating that people who experience racism have poorer mental and physical health outcomes.<sup>5</sup> Health disparities resulting from racism exist between white populations and BIPOC communities throughout the country and across a spectrum of health areas, but they do not affect all BIPOC populations in the same way or to the same degree. Black and Indigenous populations throughout the country have always made up the worst disparities across equity issues, and many populations in certain geographical areas are substantially affected as well, especially Latinx and Southeast Asian populations in urban areas.

It is important to note that inequity also exists within racial categories, and health outcomes can vary significantly within overall racial population data. The negative personal and systemic impact of racism can be even more significant for those who hold additional marginalized identities. Not only do these people and populations face racism and oppression against their other marginalized identities (e.g., transphobia), they also face particular oppression because of their intersectional identity (e.g., Black women and femmes experience racism, gender discrimination, and misogynoir—anti-Black misogyny that specifically targets Black women). This leads to unique social determinants that seriously impact the health of BIPOC subpopulations (e.g., sexual violence against Indigenous women on Tribal lands by non-Indigenous men).

Further, it is important to look at subpopulations within overall racial and ethnic categories for a more complete picture of health disparities. For example, the average premature birth rate for Asian Minnesotans (overall) is 9%, only slightly higher than the overall state prematurity rate of 8.3%. But when we dissect the data by subpopulations, sectors of the Asian Minnesota population—specifically Cambodian and Laotian Minnesotans—actually have significantly higher prematurity rates than other Asian groups (e.g., South Asian/Indian, Chinese, and Japanese).<sup>6</sup>

In short, public health is about protecting and improving the life of an entire population by avoiding and ultimately eliminating health disparities that face subpopulations and intersections thereof. We cannot advance public health without addressing racism. Race is one of the (and oftentimes *the*) top indicators of health because racism, as it was formed in the U.S. and across the globe as a racial hierarchy upholding white supremacy, is foundational to the laws and systems that result in the social, economic, and environmental disparities that impact health. This is not surprising—the intention of racism was and is to create inequity in a multitude of ways.

## Racism is embedded into our laws and systems; inequality is the point.

Laws and policies are essential tools for supporting and improving lives, as they can assign access, rights, protections, and liberties. They reflect, reinforce, and shape social norms and community values. In the U.S., law and equality have not gone hand in hand. Racism is the foundation of the laws and systems of the U.S., legalizing disparate treatment of some people and creating unfair advantage for others, which “saps the strength of the whole society through the waste of human resources.”<sup>7</sup>

Racism is “the systemic oppression of a racial group to the social, economic, and political advantage of another.”<sup>8</sup> Racism in the U.S. is grounded in white supremacy, or “the social, economic, and political systems that collectively enable white people to maintain power over people of other races.”<sup>9</sup> Any competent lawyer can accept the overwhelming historical and current evidence that the law has had a vital role in creating race-based disparities. Our systems are not broken; they are operating as they were intended to function. The intention (and in some cases, the reckless neglect that some call “unintended consequences”) of racist laws and policies was to create inequity. As a result, we are faced with serious race-based inequities that cause disease, death, and poor quality of life. This is why racism has always been a public health emergency.

Nature determines our physical features and genetic heredity. Ethnic and tribal groups, skin color, cultural practices, and physical distinctions have been of neutral, positive, and detrimental social significance throughout world history. The kinship, group connection, and genetic impact of racial groups is very real. Race itself is not problematic, but the use of race by an oppressive power to intentionally demean, dehumanize, oppress, and result in inequality is problematic. Being “colorblind” or ignorant of race is ineffective and harmful. It is necessary to look back and identify how racism was legalized and institutionalized to undo its harms.

Racial hierarchy was created in the 16th century to support colonialism. For example, when the English began to colonize India, the term “white” was used by colonizers to refer to people who looked like themselves, and the idea that white people “were inherently smarter, more capable, and more human than nonwhite people became accepted worldwide.”<sup>10</sup> The concept of whiteness grew to encompass more ethnicities and people, eventually becoming “a constantly shifting boundary separating those who are entitled to have certain privileges from those

whose exploitation and vulnerability to violence is justified by their not being white.”<sup>11</sup> As such, whiteness became fluid, existing in opposition to an “other” in a racial hierarchy. Once we define the “others,” whiteness defines itself and makes it possible to assign rights, privileges, and protections to those who do not fall within that group. It then allows for colorism and the assignment of partial privilege for those that are not furthest away from whiteness (anti-Blackness).

This racial hierarchy was embedded into the earliest of U.S. laws and systems to further colonize a land already occupied by Indigenous people and to solidify its new capitalist economy with the kidnapping and permanent enslavement of Black Africans. It is important to highlight the systemic oppression and marginalization of Black and Indigenous people in the early U.S. to understand how racism became embedded in the systems that lead to modern-day health inequities because the legalization of inequitable treatment toward Black and Indigenous people created the systemic racism that went on to impact all BIPOC for centuries and through today.

Colonialism required “the imposition of Western authority over all aspects of Indigenous knowledge, languages and cultures.”<sup>12</sup> In order to do this, people indigenous to the land we now call the U.S. became subjects of dehumanizing and racist legislation, characterizing them as “savage.” To reflect the colonial narrative that the original land inhabitants were inferior and thus less deserving of rights, privileges, or sovereignty, lawmakers developed systems and passed legislation that, for example, established “necessary conditions which had to be met if Indigenous peoples wanted to become citizens (of their own lands).”<sup>13</sup> By creating legal distinctions between white Americans and Indigenous people, lawmakers have been able to “legally” strip Indigenous people of land, resources, and culture for centuries and in a variety of ways. Cultural and spiritual practices of Native people have been criminalized. Indigenous people have been displaced, separated by boarding schools, and otherwise marginalized. This generational oppression, trauma, and marginalization are reflected in the incredibly alarming health disparities tribal communities face today. Indigenous people across what has now become the Americas have survived and thrived despite genocide and occupation of their traditional, ancestral, and contemporary lands.

The legal condemnation of Blackness is rooted in and permeates laws and systems throughout the U.S. This began with the colonial intention to solidify the U.S. as a capitalist democracy by defining who was a “slave.” While humans have enslaved other humans throughout history, the

practice of human slavery changed with the transatlantic slave trade of kidnapped Africans that stripped people of their known ancestry and culture. Slavery became an inescapable, intergenerational, fixed condemnation legally tied to the natural, physical distinctions of the Black, African-descendent race in the U.S. with few exceptions. Enslaved people were then not afforded the rights, privileges, and power that would make it possible to be free or healthy. Perhaps most infamously, the *Dred Scott v. Sanford* decision ruled that Black people were not only not U.S. citizens in the eyes of the U.S. Constitution, but also “inferior beings” with “no rights” “which the white man was bound to respect.” The life and health of enslaved Black people was recognized by the law only as a value of proprietary concern. By declaring Black people as degenerative and suitable for perpetual service during slavery and criminalizing education, mobility, and uprising of Black people, it was all too easy to perpetuate that “free” African Americans were more likely to commit crimes, more tolerable of pain, less connected to family, and less intelligent, and false “natural law theories” that supported anti-Black laws and policies long after the Emancipation Proclamation.

Even the abolition of slavery led to a legal loophole that allowed for the continued enslavement of African Americans—the 13th Amendment and the criminality of new attempts by Black people to survive and exercise any political or economic rights. This expanded the explicit legality of anti-Black treatment, creating systems, laws, and policies that would ensure continued racism, oppression, and marginalization of the “negro race” throughout the entire country. Decisions like *Plessy v. Ferguson* not only made racial segregation legal but also upheld the white supremacist myth that any separation of white versus the “others” was “separate but equal.” Anti-Black racism endured throughout 20th century society, where laws and systems criminalized and incarcerated African Americans, stripping them of their rights and forcing them back onto plantations as sharecroppers under the threat of punishment or death. Scientists, philosophers, legal scholars, and lawmakers from the nineteenth century to now have legitimized the same racism that was codified into the law since defining what a “slave” was. Black Americans continued to be harmed, marginalized, and exploited through Jim Crow laws, family separation, poverty, police violence, environmental injustice, mass incarceration, and many other forms of torture, violence, and suppression of rights. The trauma and health harms of Black people of African descent in this country due to centuries of anti-Black systemic and personal racism and violence cannot be overstated.



**"This urgent, bold action to end the suffering of those impacted by racism and the detrimental impact of racism on society cannot wait."**

## Declaring racism a public health emergency can advance public health.

The understanding that racism is such a deeply-embedded problem in our society could also lead one to believe that it is too complex a problem to be fixed—that we are too tangled in the knot of racism to get out. Surely there is a question as to whether the current civic and economic systems in the U.S. are rectifiable, but there is a lot that we can do right now to make things better. After all, racism is human-made in substantial part through human-made systems. Declaring racism as a public health emergency and resolving to address it with actionable items is one promising step communities can take to identify, reduce, and ultimately eliminate the health disparities caused by racism.

Public health emergencies provide public health emergency powers that permit designated officials—

typically chief executive officers and their top health officers—to use reserve resources and take extraordinary legal actions to respond to emergencies related to health. These emergencies can be based on the health consequence as well as the cause or precipitating event. A situation becomes an emergency when the “scale, timing, or unpredictability” of a consequential event “threatens to overwhelm a community’s ability to address it.”<sup>17</sup> Public health emergencies can be declared by different levels of governments. At any level, most responses to public health emergencies offer immediate relief, while also calling for the development of capabilities to prepare for long-term, ongoing, and foreseeable risks, often in response to an issue that has been declared an epidemic or a pandemic. Regardless of the timeline of the emergency relief, public health emergencies require large-scale solutions that can be evaluated for effectiveness.

When assessing the problem under a public health emergency framework, we can see clearly that racism is a public health emergency: Racism in the U.S. (1) affects a large number of people (certainly directly affecting BIPOC populations and essentially a large sector of the U.S. population); (2) has threatened the health of BIPOC populations for centuries, most recently heightened by the COVID-19 pandemic; and (3) requires large-scale solutions because systemic racial injustices are rooted in federal, state, and local laws, policies, and systems.

The existing racial hierarchy grounded in anti-Blackness and the oppression of Indigenous people in the U.S. came to apply, in part, to other racial and ethnic groups that came to the U.S. Racist laws and systems also expanded to capture additional languages, cultural practices, certain countries of origin, and other non-white identifiers as a pretext for legal discrimination and oppression. A few out of an enormous list of examples include the Chinese Exclusion Act of 1882, which included a number of anti-Chinese immigration measures; an alarming surge in racially motivated violence against Asian Americans following racist rhetoric used during the COVID-19 policy discussion; the forced deportations of Mexican-Americans after the Great Depression;<sup>14</sup> segregation of Latinx children in schools, and lynchings of Latinx in the Western U.S.; and hate crimes and civil rights violations against Arabs and South Asians in the aftermath of the 9/11 attacks. As if navigating life in a country with centuries-old systemic and interpersonal racism did not impact health enough, there is plenty of qualitative and quantitative data to show that the trauma, stress, and exhaustion from the experience of racism is extremely detrimental to the health of BIPOC Americans.

Systemic racism is a huge issue in Minnesota.<sup>15</sup> In fact, one could say it is the epicenter of racial inequity. Minnesota’s history includes the forced removal of the Dakota people in 1851; discriminate enforcement by public land

managers against Hmong refugees engaging natural resource-related activities in the 1980s; and the displacement of Black Minnesotans in the Rondo Community with the construction of Interstate 94. Today, we see disparate hospitalization and ICU admission rates of Indigenous and Asian Minnesotans diagnosed with COVID-19; the highest age-adjusted death rates for Black and Latinx Minnesotans diagnosed with COVID-19; and the low educational attainment rate of Indigenous and Latinx communities in the state. Minnesota is fraught with racial injustice.<sup>16</sup>

Racism continues to be codified into law, perhaps less explicitly than before. Whereas “others” were legally defined in the aforementioned ways throughout the last 500 years, today the legalization and systemic incorporation of racism looks like politicians that work to block, suppress, and delegitimize systems, laws, and policies that protect or support the ability of BIPOC communities to survive, thrive, and participate in governance. It looks like old and new federal, state, and local systems, laws, and policies that result in negative social determinants of health and health disparities facing BIPOC communities in the U.S., especially during the COVID-19 pandemic. It looks like the public health emergency that we face today, because the health of BIPOC communities reflects how legalized, systemic racism was always meant to be: inequitable.

The federal government<sup>18</sup> as well as many state and local governments has recognized the grave collateral damage caused by racism and inequity in the U.S. Accordingly, across the country, hundreds of state and local governments<sup>19</sup> have passed legislation declaring racism a public health crisis or emergency. These actions are not limited by geography. Many local boards and commissions throughout the Southern U.S. have passed resolutions declaring racism as a public health crisis and in March 2021, the state of Virginia became the first Southern state in the country to name racism as a public health crisis. Additionally, many governing bodies, including the U.S. House of Representatives,<sup>20</sup> have introduced, but not yet passed, resolutions declaring racism as a public health emergency.

Minnesota is also on the map, with the Minnesota House of Representatives passing a declaration in July 2020 requiring, among other actions, the creation of a House Select Committee to assure an intersectional race equity lens on House legislative items. Many Minnesota localities have passed these declarations as well, from Hennepin County and the city of Minneapolis to Olmsted County and the city of Bloomington.

These declarations are an important first step in the movement to advance racial equity and justice, but to be effective they should explicitly contain declarations of racism as a public health crisis (i.e., a stated purpose and intent) and resolutions to act (i.e., the action items, timelines, and allocation of resources for strategic action). Effective resolutions address challenges upstream (i.e., changing systems) and downstream (i.e., effecting personal experience of racism). While the action items can vary by jurisdiction, what matters is that the resolutions have “teeth” with explicit deadlines, so that they are not simply performative. Typical action items include directions to perform new or updated research on racial equity issues in the jurisdiction, the creation of a work group or task force comprised of community members to identify policy solutions to well-established racial justice issues in the area, and the establishment of a racial equity assessment for all legislative action or government agency processes.

There are many subject matter areas Minnesota communities can work on to address the significant health inequities in their resolutions. To name a few: elder care (e.g., food bank delivery, racial differences in nursing home residents’ quality of life), court systems and policing (e.g., police brutality, access to competent legal representation), child development (e.g., early education, access to childcare, youth counseling

services, the school-to-prison pipeline), housing (e.g., quality and access, home ownership and appraisal rates), income (e.g., poverty, minimum wage), social services (e.g., child welfare system), health care (e.g., maternal health, equitable vaccine distribution), environmental injustice (e.g., community gardening, clean water), and other chronic and infectious disease concerns (e.g., flavored tobacco, HIV/AIDS treatment, access to culturally competent and healthy foods).

By explicitly resolving to address racial disparities that create the most health inequity within a jurisdiction, declarations of public health emergency solidify for the public and the government that racism, not race, causes the health disparities that have led us to this crisis.

## Conclusion

Racism has always been a time-sensitive, urgent concern that has resulted in trauma, poor quality of life, disease, and death. It has impacted human beings on every level imaginable. It affects our health—physiologically and psychologically. Genetically. Individually and collectively. Health is one of the biggest reflections of racism in the U.S. because so many factors contribute to our health. Our health, in turn, determines how we fare in many other ways. Law and policy are essential tools for improving public health and addressing the social determinants of health. The cyclical nature of health is why laws that declare racism as a public health emergency can help us untangle the knot of racism and health inequity in this country. This urgent, bold action to end the suffering of those impacted by racism and the detrimental impact of racism on society cannot wait.



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## Notes

- <sup>1</sup> This article uses the term “Black, Indigenous, and People of Color” (“BIPOC”) to refer to Black people of African descent (Black, African-American, and Black African immigrants); the Native and Indigenous North and South American; nonwhite Latinidad; South Asian, Asian and Pacific Islander; nonwhite Arab (e.g., Middle East, Northeast African); and other nonwhite communities that have faced racial oppression in the U.S.; as well as the intersections thereof (e.g., Black Natives, Afro-Latinx).
- <sup>2</sup> Braveman P. (2014). What are health disparities and health equity? We need to be clear. *Public Health Reports (Washington, D.C.:1974)*, 129 Suppl 2(Suppl 2), 5–8. <https://doi.org/10.1177/00333549141291S203>.
- <sup>3</sup> “What Is Health Equity?” Robert Wood Johnson Foundation. <https://www.rwjf.org/en/library/research/2017/05/what-is-health-equity.html>
- <sup>4</sup> North Minneapolis resident (74.8 years life expectancy), Bryn Mawr neighborhood resident (83.5 years life expectancy); Robert Wood Johnson Life Expectancy calculator (2020), available at: <https://www.rwjf.org/en/library/interactives/whereyouliveaffectsshowlongyoulive.html>.
- <sup>5</sup> E.g., “Clinicians’ Implicit Ethnic/racial bias and Perceptions of Care among Black and Latino Patients,” Blair IV, et al. *Ann Fam Med*. 2013 Jan-Feb; 11(1):43–52.
- <sup>6</sup> “Eliminating Health Disparities Initiative: Fiscal Years 2015 to 2018” (March 2019), <https://www.health.state.mn.us/communities/equity/reports/legislativevrt2019.pdf>.
- <sup>7</sup> “Racism and Health,” American Public Health Association, <https://www.apha.org/topics-and-issues/healthequity/racism-and-health>.
- <sup>8</sup> “Racism.” Merriam-Webster.com. 2021. <https://www.merriam-webster.com> (8 March 2021).
- <sup>9</sup> “White supremacy.” Merriam-Webster.com. 2021. <https://www.merriam-webster.com> (8 March 2021).
- <sup>10</sup> National Museum of African American History & Culture. “The Historical Foundations of Race.” <https://nmaahc.si.edu/learn/talking-about-race/topics/historical-foundations-race>.
- <sup>11</sup> Paul Kivel. (1996). Page 19. *Uprooting Racism: How White People Can Work for Racial Justice*. Gabriola Island, BC: New Society Press.
- <sup>12</sup> Tuhiwui Smith L., *Decolonizing Methodologies: Research and Indigenous Peoples*. London: Zed Books, 1999.
- <sup>13</sup> *Id.*
- <sup>14</sup> It is also important to note that Indigenous Mexicans/Chicanx who were thrust into the U.S. territory as the result of the Mexican-American war were also impacted by racist laws and policies and anti-Chicanx laws and policies.
- <sup>15</sup> Mni Sota Makoce (Minnesota) is still and always will be Indigenous land, homeland of the Dakhóta people despite the genocide, treaty violations, and colonial theft and violence of the Minnesota state and federal government.
- <sup>16</sup> See Minnesota Legislature’s House Select Committee on Racial Justice Report to the Legislature published in December 2020 for more information on how systemic racism has shaped inequity in the state of Minnesota.
- <sup>17</sup> “Conceptualizing and Defining Public Health Emergency Preparedness,” Nelson, C., et al. (2007). *Am. Journal of Pub. Health*, 97 Suppl 1 (S11). <https://doi.org/10.2105/AJPH.2007.114496>.
- <sup>18</sup> E.g., Presidential Action of Joseph R. Biden, Jr. Executive Order on Advancing Racial Equity and Support for Underserved Communities Through the Federal Government. Jan. 20, 2021.
- <sup>19</sup> See the American Public Health Association database for a summary of some of the RPHE [Racism is a Public Health Emergency] action items passed—“Racism Is a Public Health Crisis” <https://www.apha.org/racism-declarations>.
- <sup>20</sup> H.Res.1069, Declaring racism a public health crisis. <https://www.congress.gov/bills/116th-congress/house-resolution/1069/actions>.





# Rethinking Pretrial Detention

*By Judge JaPaul J. Harris*

“The greatness of a community is most accurately measured by the compassionate actions of its members”  
— Coretta Scott King

No decision is tougher and more consequential than the decision regarding pretrial detention. We know that while in jail people risk losing their jobs, not getting needed medication, losing housing, and losing custody of their children.<sup>1</sup> Studies have shown that there are racial disparities in bail setting.<sup>2</sup> Studies also show that people who cannot afford bail receive harsher outcomes.<sup>3</sup> With this decision there are many questions that the Court thinks about. Will the defendant return to court? Will the defendant commit additional offenses jeopardizing the safety of the community? Will the pretrial detention destabilize the defendant’s family leading to other collateral consequences? This issue of the *Hennepin Lawyer* explores the law and community, and this article will focus on how the pretrial release decision directly affects the community. The defendant is a member of the community and the effect of detention on the defendant’s family has a direct effect on the community. However, public safety is also front of mind when making these decisions. In the best of times, these decisions are very consequential as they have the ability to destabilize families and the community. In this article, I will (1) explain how a pretrial decision is made, (2) discuss this decision-making process in the context of a global pandemic, (3) discuss this decision-making process in the context of a racial reckoning, and (4) discuss how we can rethink the concept of public safety as we move forward.

## The Legal Framework of Bail and Release in Minnesota

In Minnesota, defendants have a constitutional right to unconditional bail except in cases charged as first-degree murder.<sup>4</sup> Judges are prohibited by both the federal and state constitutions from imposing “excessive” bail.<sup>5</sup> Bail is not excessive unless it is more than the amount reasonably necessary to guarantee the defendant’s appearance for trial.<sup>6</sup> It is also unconstitutional for judges to set a monetary bail amount for a defendant that can only be met by a cash deposit for the full amount of the bail.<sup>7</sup> If a defendant is not able to pay the bail amount imposed by the court, that defendant remains in custody until his or her case is resolved. The Minnesota Rules of Criminal Procedure presume that a defendant will be released unless the court determines that the defendant’s release would endanger public safety or will not reasonably assure future appearances. The judge must

consider the nature and circumstances of the alleged offense; the weight of the evidence; family ties; employment; financial resources; character and mental condition; ties to the community; defendant’s criminal history; prior history of appearing in court; and the safety of the community, alleged victim, and others when making this decision.<sup>8</sup> The Minnesota Judicial Council approved Policy 524, requiring judges to use an evidence-based risk assessment tool when determining pretrial release. For many years, the court in Hennepin County has been a trailblazer in the use of pretrial release instruments. The idea behind using these tools is that they will provide information that will help predict whether a person will return to court for another hearing or commit a crime during the pretrial period. The tool is meant to be a predictive tool that removes bias from the decision-making process.

In practice, the arraignment and first appearance hearings are where these decisions are made. At these hearings, the information available to the court includes the criminal complaint, the bail evaluation tool, and the argument of the parties. In making the decision, the court has three options: (1) release the defendant without bail and without conditions (also known as release on own recognizance), (2) release the defendant with conditions (also known as conditional release), or (3) set monetary bail. When a defendant is released with conditions by the court, the court is required to set an alternative “unconditional bail,” which is an amount the defendant can pay to be released with no other release conditions other than payment of the monetary bail amount. The court is not permitted to set monetary bail for the sole purpose of encouraging a defendant to accept conditional release.<sup>9</sup>

## COVID-19 Pandemic and Pretrial Detention Decisions

“It’s going to get worse”— Dr. Anthony Fauci

March 2020—the month the country came to a halt and COVID-19 was thrust into our consciousness. On March 11, 2020, Dr. Anthony Fauci, an infectious disease expert at the Centers for Disease Control, testified before the U.S. House of Representatives Oversight and Reform Committee about a contagious virus that had brought China and Italy to a halt. On that same day, the World Health Organization officially classified COVID-19 as a pandemic. On March 13, 2020, Gov. Tim Walz signed Emergency Executive Order 20-01 which declared a peacetime state of emergency and urged Minnesotans to practice social distancing; instructed nonessential workers to stay home; closed schools, bars, restaurants,

and entertainment venues; and prohibited group gatherings. The Minnesota Supreme Court issued Administrative Order 20-8001, imposing limitations on the operations of the Minnesota judicial branch.<sup>10</sup> What followed was a summer, fall, and winter of fluctuating COVID-19 infection rates, an increasing number of deaths, multiple extensions of the peacetime state of emergency, and multiple amendments to Minnesota Supreme Court Administrative Order 20-8001, which culminated in a pause on trials in late November 2020, when the COVID-19 pandemic reached a critical stage.

The impact of COVID-19 cannot be exaggerated. It triggered an abrupt lockdown of courts, which delayed court hearings resulting in a backlog that continues to grow. The COVID-19 pandemic forced the Minnesota judicial branch to take extraordinary steps to maintain court operations while shifting almost all of the work away from traditional courtrooms and into packed Zoom “breakout rooms.” As of March 20, 2021, the COVID-19 virus has infected over 400,000 Minnesotans, leading to over 6,000 deaths.<sup>11</sup> In Hennepin County, 99,241 people have been infected and 1,633 people have died.<sup>12</sup> The COVID-19 pandemic has affected our legal community in challenging and far-reaching ways. Addressing the COVID-19 pandemic in pretrial detention was a multilayered approach.

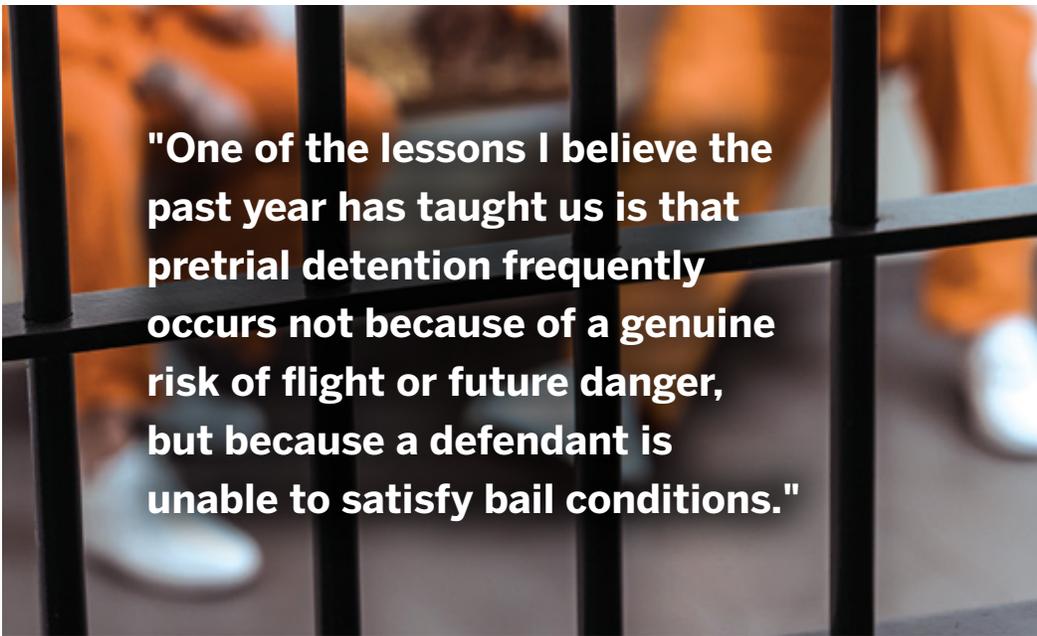
Whatever complications the pretrial detention system had in the best of times were exacerbated by the COVID-19 pandemic. Given the nature of the jails, COVID-19 presented a particular threat to its population. Public health officials advised people to maintain social distance, wear masks, and avoid large gatherings, but the jail experience is typically communal. Inmates are often housed in large dormitories or shared cells, eat in dining halls, and share shower and toilet facilities. Each of these factors increases the risk for COVID-19 infection, developing severe symptoms, and death. Furthermore, research has shown that a higher percentage of inmates in jail are “high risk” for COVID-19 due to age and preexisting health conditions compared to the general population. Jails also have large numbers of people entering and leaving, which creates further possibility of exposure.

Because the jails were especially vulnerable to COVID-19 transmission, the court needed to examine the jail population and see if it could reduce the population by releasing nonviolent offenders. This needed to be done with public safety also in mind. The Hennepin County Adult Detention Center tested 8,410 inmates and had 351 positive tests.<sup>13</sup> Over the past year, the population at the Detention Center is about 45 percent lower than it was at the start of the COVID-19 pandemic.<sup>14</sup> The facility’s population

was 303 on March 13, 2020, the day the governor signed the peacetime emergency order; within a month of the order, the population was down to 172, and within two months, it was down to 111.<sup>15</sup> On July 22, 2020, the population was at its lowest point of 63.<sup>16</sup> The Detention Center had an 85-person median daily population in 2020.<sup>17</sup> For context, it had a median daily population of 417 in 2015, 406 in 2016, 409 in 2017, 424 in 2018, and 349 in 2019.<sup>18</sup> It had a median daily population of 409 people in the five years preceding 2020.<sup>19</sup> While inmates at the Hennepin County Adult Correctional Facility are not there awaiting the outcome of their cases, this data demonstrates the justice system's attempts to decrease the population of people in jail.

The significant reduction in the jail population was the result of a collaborative effort. First, prosecutors looked over cases to see if inmates awaiting trial could be released due to the pandemic. The Hennepin County Attorney's Office determined which county jail inmates qualified for possible release. Law enforcement agencies throughout Hennepin County suspended most jail bookings for low-level crimes to avoid increasing the population of the jail. The Hennepin County court issued an order allowing the release of some inmates from the county workhouse to slow the transmission of COVID-19. The Hennepin County Community Corrections Department worked to identify and release all inmates who qualified under the court's order.

While there was a considerable reduction of the jail population, new cases were still being filed and the court needed to assess each defendant's risk while balancing his or her liberty interest. The decision on pretrial detention took into account not only public safety and the likelihood that the defendant would return to court but also the consequences of a defendant's being exposed to a highly contagious virus while being detained as the accused. The pandemic shifted the balance of liberty interests, whether consciously or unconsciously. With this shift, public safety remained a top priority. When presented with evidence that a defendant posed a risk to the community's safety, the State continued to seek bail as it had before the pandemic, and the court continued to set bail in those cases. The significant decline in the jail population can be explained, in part, to the consideration of the medical risks associated with individuals remaining in custody during the COVID-19 pandemic. Even if the jail took extensive precautions, each time a new person was placed in custody, COVID-19 risks were introduced. This new analysis did not disregard the law, but it fell squarely in the information that the court could consider. Minnesota Rule of Criminal Procedure 6.02 subdivision 2(m) provides



**"One of the lessons I believe the past year has taught us is that pretrial detention frequently occurs not because of a genuine risk of flight or future danger, but because a defendant is unable to satisfy bail conditions."**

that the court may consider the safety of the community. This was traditionally interpreted to consider community safety in light of the defendant's reoffending. However, in the context of the COVID-19 pandemic, it was interpreted to consider the community's safety in the event of the virus's spread. What this meant is that in many circumstances the State did not seek bail that could lead to detention in the same way it would have prior to the pandemic. In practice, these were defendants who had not committed serious or violent crimes, defendants who presented some risk of flight, but no threat to the public, and defendants who were highly vulnerable to the COVID-19 virus.

The traditional analysis of risk of flight and public safety concern was being weighed against the defendant's vulnerability to COVID-19. The result was that more people were either conditionally released or released on their own recognizance. With the court moving to the virtual world, these defendants were able to appear in court from home.

### Speeding Along with a Pandemic—The Tension between Public Health and the Constitution

"In all criminal prosecutions, the accused shall enjoy the right to a speedy and public trial, by an impartial jury of the State and district wherein the crime shall have been committed..." Article VI, U.S. Bill of Rights

In the wake of the COVID-19 pandemic, the court was closed for extended periods of time, and the pretrial detention decision raised constitutional concerns for those who were

detained, in addition to the public safety and flight issues. Because the Minnesota Supreme Court issued an order suspending jury trials, issues were raised around the possible violation of a defendant's right to a speedy trial. Both the United States Constitution and the Minnesota Constitution guarantee criminal defendants the right to a speedy trial.<sup>20</sup> In Minnesota, Minnesota Rule of Criminal Procedure 11.09(b) outlines the requirement to adhere to the defendant's right to a speedy trial.<sup>21</sup> "A defendant has no duty to bring himself to trial."<sup>22</sup> The U.S. Supreme Court, in *Barker*, set out four factors which courts are to consider in analyzing claims of denial of the speedy trial right. These factors are the length of delay, the reasons for the delay, the defendant's assertion of the right, and the prejudice to the defendant resulting from the delay.<sup>23</sup>

The COVID-19 pandemic raises an important question around the issue of speedy trial. How long is too long? Due to the rare and unprecedented nature of the COVID-19 pandemic, there is not clear case law on analyzing the speedy trial demand in this context. There is abundant case law regarding analysis of the speedy trial demand in light of an individual health concern, but the case law has mixed results. Against the setting of COVID-19 it is still unclear how much delay will be allowed under the Constitution. As we begin to return to the courtroom and resume trials, defense attorneys will raise speedy-trial challenges. The number of these challenges would have increased if the court did not adapt to consider the effect of COVID-19 in its release decisions. Moreover, Article VI of the Constitution also outlines a right to a public trial, which will also be the source of much litigation in the future as we adapt to this legal world after COVID-19.

## Global Pandemic + Racial Reckoning = New Focus on Pretrial Justice

“Please, I can’t breathe.” – George Floyd

In many ways, the COVID-19 pandemic has exposed the fundamental flaws of pretrial detention. However, what happens when we add the issues of a reckoning on the issue of race and social justice? On May 25, 2020, Darnella Frazier posted a nine-minute video to Facebook showing white Minneapolis police officer Derek Chauvin pressing his knee into George Floyd’s neck behind a squad car outside a south Minneapolis convenience store. Mr. Floyd died, and what followed were nationwide protests and a new reckoning with race in America and in the Twin Cities. This article is being drafted at the start of the Derek Chauvin trial; however, this article is not meant to dive into the trial and the possible result, but rather to show that, in addition to addressing a deadly global pandemic, Minneapolis was ground zero for a reckoning with racial discrimination. There have been high-profile killings of Black men in the past by the police in the Twin Cities (e.g., Jamar Clark and Philando Castile); however, the worldwide response to the killing of George Floyd has been different. There has been a renewed focus on the disparities that lead to these deadly results. The disparities in the court system were front and center.

Even with the move to release nonviolent individuals during the COVID-19 pandemic, there have been racial disparities. Earlier in this article, I stated that the Hennepin County Adult Correctional Facility population was 303 on March 13, 2020, the day the governor signed the peacetime emergency order. I did not say that African Americans made up 47.1 percent of the population (143).<sup>24</sup> Within a month of the governor’s order, the population had dropped to 172, with African Americans constituting 59.8 percent of the population (103 inmates).<sup>25</sup> Within two months, the inmate population had been reduced to 111, with African Americans constituting 63 percent of the population (70 inmates).<sup>26</sup> Hennepin County Adult Correctional Facility’s population hit its lowest point at 63 on July 22, 2020, but African Americans made up 61.9 percent of the population (39 inmates).<sup>27</sup> In Hennepin County, African Americans account for 13.9 percent of the population. Again, these figures are from the Hennepin County Adult Correctional Facility, which is not the facility

where defendants are held pending trial, but they are meant to highlight the disparities that exist. While the total number of inmates was decreasing, the proportion of African American inmates was increasing. When the disparities in COVID-19 cases are layered on top of the jail disparities, the situation becomes even more concerning. African Americans make up 7 percent of the Minnesota population but account for 9 percent of COVID-19 cases, 12 percent of COVID-19 hospitalizations, and 12 percent of COVID-19 intensive care unit admissions.<sup>28</sup> When other people of color are included, the disparities become even more pronounced.

Before the pandemic and the unrest after the killing of George Floyd, the pretrial detention system was the subject of criticism and a push for reform, but COVID-19 has renewed the push for reform. An example of this new interest in pretrial release can be seen in the efforts of the Minnesota Freedom Fund. In the wake of the killing of George Floyd, the organization has raised over 30 million dollars to assist its mission of paying the criminal bail and immigration bonds for those who cannot otherwise afford bail.<sup>29</sup> The effectiveness of pretrial release tools is also being debated. Minnesota has a policy of using pretrial release tools because research can validate them and eliminate information with a biased outcome. The tool’s purpose is to attempt to remove bias from pretrial decisions and to be more predictive. However, the new push for pretrial release contends that the tools are biased because they are derived from data reflecting the structural racism and institutional inequity that impact our court policies and practices, and that using the data in these tools deepens inequity. The pandemic and killing of George Floyd have thrust the issues of systematic racism into the forefront of our profession in a way that we cannot avoid.

### Post-COVID-19, Where Do We Go from Here?

“The world’s going one way and people another!” – Poot, HBO “The Wire,” Season 4, Episode 10

Many decisions were made quickly at the start of the COVID-19 pandemic in response to a serious threat. Throughout the pandemic, the environment has been constantly changing, necessitating flexibility and innovation, two abilities for which the court is not traditionally known. The court and the justice system

as a whole have been required to address COVID-19’s shifting public health threat while also addressing public safety concerns. We are now a year removed from the initial COVID-19 restrictions. We are in an atmosphere in which vaccines are being distributed, infections and deaths are decreasing, and we are moving to gradually reopen the court and getting back to in-person hearings. This is still a slow process, but the potential of sitting in a courtroom with other people will become a reality. As we approach the return to the courthouse, we are confronted with a number of challenges. How will we use the technology we have acquired? How are we going to address the case backlog? Are we going to go back to business as usual, or will we use what we learned last year to incorporate technology into our business processes in order to be prepared for future uncertainty? Will we push forward full-throttle or will we strike a balance between public health and constitutional concerns? How are we going to treat the pretrial detention determination?

Over the last year, we have reduced jail populations to historic lows and released a large number of people who would have been held on bail in the past. Are we going to revert to old habits and start filling jails again? One of the lessons I believe the past year has taught us is that pretrial detention frequently occurs not because of a genuine risk of flight or future danger, but because a defendant is unable to satisfy bail conditions. Using technology such as text message reminders and Zoom, defendants were showing up to court and not reoffending. At the same time, we kept the jail population low and ensured the safety of those who were detained.

More importantly, by utilizing the various release options we also limited the collateral consequences of being in custody pending trial. In recent months, there has been a focus on the rise in certain crimes in the community, which may lead some to advocate for the misguided get-tough-on-crime dogma. As restrictions are lifted, we must continue to measure the risk to public safety in making our release decision in the way that allowed us to reduce the jail population. We should take the changes we made in response to the pandemic, as well as the lessons we learned from those changes, and continue to develop lasting change in how we respect the dignity of those who appear in front of us, while also protecting public safety.



**Judge  
JaPaul  
J. Harris**

Judge JaPaul J. Harris was appointed to the Second Judicial District by Gov. Mark Dayton in June 2018. He previously served as a judicial referee in Hennepin County from 2012 to 2018. Judge Harris serves as a member of the Minnesota Supreme Court Committee for Equality and Justice, where he serves as the chair of the education committee. In addition to his bar activity, Harris coaches youth sports at Jimmy Lee recreation center in Saint Paul.

### Notes

<sup>1</sup> Jonah B. Gelbach and Shawn D. Bushway, "Testing for Racial Discrimination in Bail Setting Using Nonparametric Estimation of a Parametric Model," UC Berkeley (August 20, 2011).

<sup>2</sup> Id. (Compared to white men charged with the same crime and with the same criminal histories, African American men receive bail amounts 35 percent higher than white men, and Hispanic men receive bail 19 percent higher than white men.) People who cannot afford bond receive harsher case outcomes. They are three to four times more likely to receive a sentence to jail or prison, and their sentences are two to three times longer.

<sup>3</sup> Christopher T. Lowenkamp, Marie VanNostrand and Alexander Holsinger, "Investigating the Impact of Pretrial Detention on Sentencing Outcomes," Laura and John Arnold Foundation (November 2013). (People who cannot afford bail are three to four times more likely to receive a sentence to jail or prison, and their sentences are two to three times longer.)

<sup>4</sup> See MINN. CONST. ART. I, § 7; and State v. Pett, 92 NW2d 205 (Minn. 1958).

<sup>5</sup> See U.S. CONST. AMEND. XIII; MINN. CONST. ART. I, § 5.

<sup>6</sup> See *State v. Whitcomb*, 413 NW2d 839 (Minn. Ct. App. 1987).

<sup>7</sup> See *State v. Brooks*, 604 NW2d 345 (Minn. 2000).

<sup>8</sup> Minn. R. Crim. Pro. 6.02 subd. 2

<sup>9</sup> *State v. Martin*, 743 NW2d 261 (Minn. 2008).

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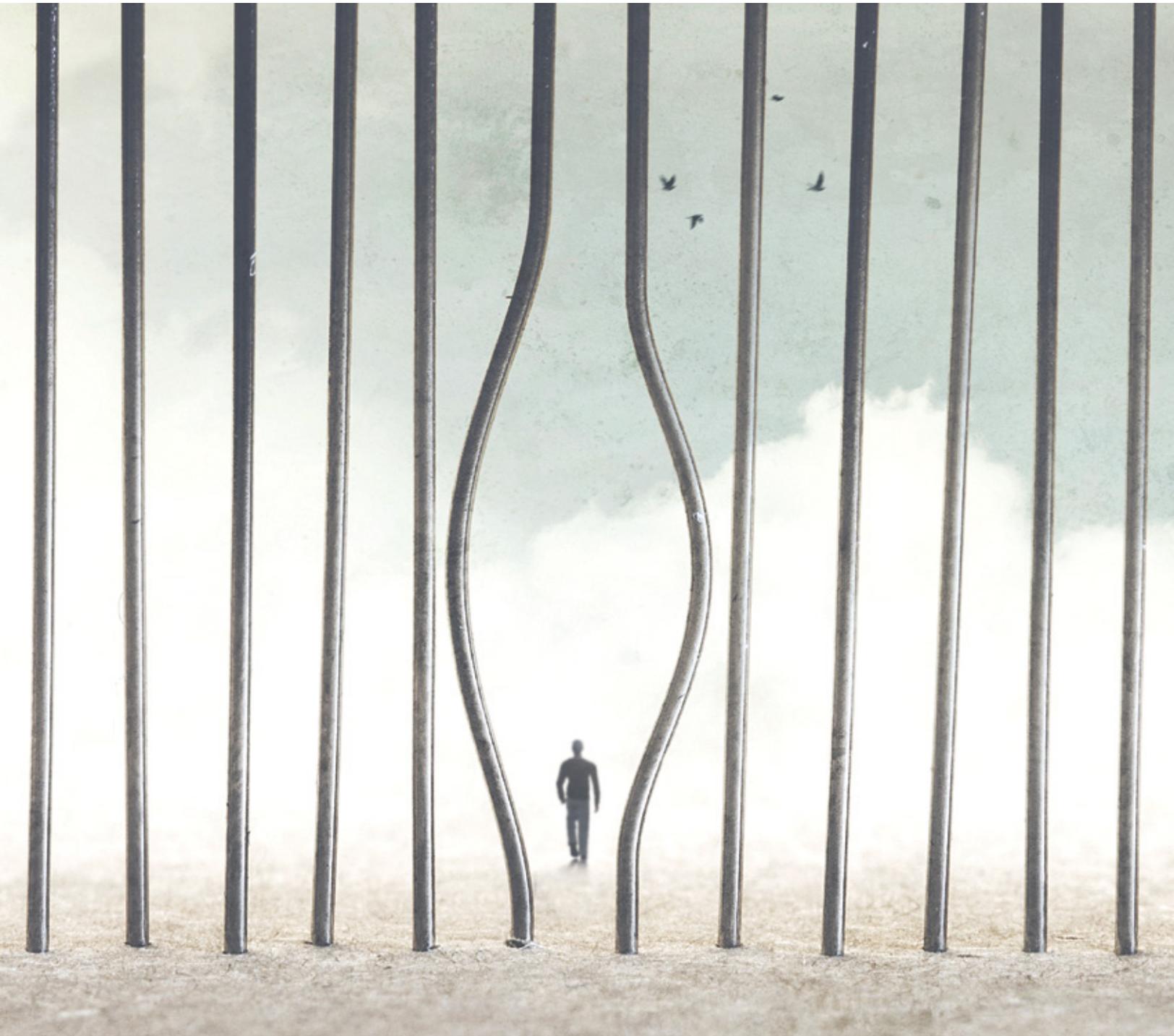
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# The Prison-to-Law Pipeline Can Transform the Legal Discipline

Putting the keys to the law in the hands of those most impacted by it

*By Elizer Darris, Emily Hunt Turner, and John Goepfinger*

## An Excerpt from an Expert: Elizer Darris

The full scope and power of the law impacts those who have had their liberty legally taken away more than anyone else on this planet. From an absence of liberty comes an interest in mastering the law not out of curiosity, or as an academic exercise, or strictly in pursuit of a career. For those who have had their liberty stripped as a result of legal instruments being filed and a legal process carried out to conclusion: learning the rudiments of law is a vital vehicle for freedom.

For some, learning how to properly navigate the deep, mystified waters of law while behind prison walls can easily become an obsession. For others who have resigned themselves to the notion that they may never leave prison alive, learning the law becomes one of the few avenues they have to prevent prison officials from mistreating or even killing them (whether that is a slow process through attrition and medical neglect or a process that happens expeditiously through violent staff assaults).

I went into the prison system as a teenager who had yet to graduate from the eighth grade. I was given a life sentence and told that I would spend “the rest of my natural life in the care of the commissioner of correction.” My knees buckled upon hearing those words as each one fell on me like a ton of bricks. The sense of hopelessness that washed over me was overwhelming. I spent the first part of my incarceration in turmoil and I struggled mightily, my maladjustment an intentional and strategic message I was sending the universe: I would not conform to the environment.

Fortunately for me, some of the older, wiser inmates took notice of me and saw beyond the ungainly exterior that I projected. They saw my worth and began to challenge my thinking and approach to life. They provided me with books and provokingly deep conversations. During the course of my studies with one of them, he looked at me and said, “You know you don’t have to die in here. Start studying law.” And I did. I signed up to go to the law library every single chance I got. We would hold weekly discussion groups in the prison unit during the time we had out of our cells where we would break down briefs, judicial decisions, legal journal articles, and books that explained the technical aspects of legal writing. Sometimes we would

engage in hotly contested debates on the substance of legal arguments and our respective opinions on whether or not various standards of review were satisfied by the arguments presented by our compatriots.

It is with this backdrop of deep and meaningful training in the law that I began working to articulate a legal theory that, once reduced to writing and filed by my appellate attorney, ultimately led to my liberation when the Minnesota Supreme Court reversed my life sentence on appeal.

I am a prime example of someone who, through the study of law, has been able to come out and forge lasting change that continues to impact our community deeply. Although I did not have access to a formal law



degree while in prison, the legal training I received from towering legal scholars and the methodical and practical approach that was drilled into me by so many years of study allowed me to excel as a community organizer once I returned home. From there, I worked as an educator, a political field operative, a motivational speaker, and as a community power broker. As a result, I was hired by the ACLU of Minnesota where I created and built out the Smart Justice Campaign, which is a national ACLU effort to impact mass incarceration by 50 percent. To date, our team has worked on cash bail reform, reducing technical violations, prosecutorial reform, expanding the electorate to include impacted voices and communities, policing reform, warrant forgiveness, and civil asset forfeiture reform—all efforts to which my legal training added immense value.

Recently, I was appointed by Gov. Tim Walz as the first formerly incarcerated member of the State Board of Public Defense. I was also recruited by Attorney General Keith Ellison to be one of the founding board members of the newly formed Conviction Review Unit (CRU). The CRU will have the power to review cases of those incarcerated who are proclaiming actual innocence or who believe that they have excessive sentences. Who better than someone like me to work on these efforts?

None of this would be possible if I had not embarked on a journey to understand and embrace the power of the law as an engine to invest in our community and to impact my inner and outer world. My journey with the law was my saving power. ■

## Access Is Everything

Nobody warrants access to legal education more than someone who has been directly impacted by legal processes and racialized legal outcomes. Yet, notwithstanding notable movement with “college behind bars” in Minnesota and nationwide, currently incarcerated scholars do not have access to ABA-accredited law degrees. What’s more, formerly

incarcerated scholars face egregious barriers to law degrees and professional licensure for a variety of reasons: one, morality clauses disqualify those with criminal records from gaining admission into law school and sitting for the bar exam; two, law degrees generally require undergraduate degrees and many people in prison do not have access to bachelor’s degrees; and, three, law schools and bar associations that are amenable to individuals with low-level offenses, such as DUIs, are generally not

amenable to individuals with felony convictions. Consequently, the legal field is largely devoid of students and practitioners carrying firsthand experience with incarceration, despite the fact that ABA law schools have conferred nearly two million law degrees over the last 50 years.

There are three distinct issues inherent in the lack of representation outlined above; issues that are thwarting critical progress toward a legal system that is *wholly* representative.

The first issue is centered on due process and access to liberty. Although prison law libraries are invaluable treasures nested within the walls of nearly all correctional facilities, many no longer have the physical books that were once their hallmark. Instead, with little to no technical training or familiarity with online legal platforms, residents are handed tablets and sent on their way. Beyond this, most scholars who are looking to master *all* of the varying components of the law (legal research and writing, post-conviction remedies, appellate processes, etc.) require a law degree. When incarcerated legal scholars do not have access to the full breadth of an ABA-accredited legal education, they are, in turn, denied the full suite of legal tools and avenues that could directly lead to their liberation—undermining the core pillars of justice and freedom that frame the scaffolding of our democracy.

The second issue stems from the abrupt halt in practicing law that prison litigators, or “jailhouse lawyers,” experience upon release. Under *Johnson vs. Avery*, the Supreme Court held that inmates are allowed to assist other inmates with legal matters, including filing petitions and preparing writs of *habeas corpus*. Under this rule of law, established in 1969, prison litigators across the country have been engaging in the practice of law not only by filing *pro se* petitions but also by assisting others with their legal matters. Yet, upon release, should prison litigators directly leverage these legal muscles by representing others, they can be rearrested for practicing law without a license. Said litigators also no longer have standing to file prison conditions suits, and the legal chops that they have developed go unrecognized by the legal discipline. This is a tremendous loss not only for individuals who wield deep legal expertise but also for the community who no longer gets to bear the fruit of their efforts.

The third issue hinges on advancing the legal discipline—a discipline that has historically been plagued by racialized legal processes. When those with firsthand experience of these legal processes are denied formal on-ramps into the legal field by virtue of morality clauses that make judgment calls on their character and fitness, they are simultaneously denied the opportunity to shape the contours of the legal discipline. This is, most importantly, a social and economic disservice to thousands of individuals who would otherwise be qualified to study and practice law. It is also a grave disservice to the legal discipline as it is not benefiting from—and laws are not advancing with—the wealth of generational legal knowledge and expertise held by currently and formerly incarcerated legal scholars and those whose lives have, in many cases, been upended by the legal system.



## A Minnesota Solution

A solution that addresses the aforementioned issues by placing the keys to the law in the hands of those most impacted by it is being developed in Minnesota. Collectively forged by currently and formerly incarcerated leaders, law professors, the Minnesota Department of Corrections, Mitchell Hamline Law School, North Hennepin Community College Paralegal Program, Until We Are All Free, and All Square, this solution hinges on a Prison-to-Law Pipeline, a reentry clinic, and companion law firm that will address the legal void described above and racialized legal outcomes by (1) ensuring that currently incarcerated Minnesotans have access to ABA-accredited legal degrees, (2) creating employment and experiential opportunities for currently and formerly incarcerated legal scholars, and (3) undertaking impact litigation centered on the effects of pre- and post-release barriers that Minnesotans with criminal records face.

## The Pipeline

The Prison-to-Law Pipeline (PLP) is a program that opens the door to ABA-approved paralegal degrees and ABA-accredited law degrees for currently incarcerated Minnesotans. The Pipeline’s first cohort, which entails six prospective paralegal students and two prospective law students, is slated to commence in June and August, respectively. To our knowledge, this program will facilitate the first-ever currently incarcerated juris doctorate students who will be plugging into existing courses at Mitchell Hamline Law School from Shakopee and Stillwater correctional facilities.

There are several reasons why the PLP will yield lasting change in the legal discipline. One, incarceration has historically been used as a lever for disinvestment, specifically as it relates

to legal education. Yet there is nobody better equipped to learn the law than someone who has been impacted by it. As stated by Maureen Onyelobi, a PLP scholar who recently took her LSAT exam, “We have a drive and a passion to learn the law that most have never seen before because we know what it is to be in here; we know what it’s like to be on this side of the law.” As Elizer Darris so eloquently illustrated, learning the law while in prison was not only a path to spiritual liberation, it also led to his physical freedom.

Two, the legal discipline, and the community at large, has already benefited from the expertise of formerly and currently incarcerated legal scholars who, *without* ABA-accredited legal degrees, have founded companies, drafted legislation, taught at legal institutions, sat on state boards of public defense, drafted and filed legal petitions, led campaigns, and mentored others towards post-conviction relief. The PLP will build on this expertise by formalizing accredited pathways to legal education *because of* one’s experience with incarceration, recognizing that the yield of legal practitioners with lived experience is an essential element of a fully representative legal discipline and a step towards healing the effects of flawed legal processes, including, but not limited to, cash bail, disparate sentencing structures, prosecutorial discretion, unconstitutional arrest practices, the criminalization of drugs and drug-related crimes, and other regimes that have created mass incarceration.

From the client and client-outcomes perspectives, there is also medical research to support the importance of having a shared lived experience with one’s professional practitioner. A 2017 meta-analysis in the *Journal of Racial and Ethnic Health Disparities* concludes that patients have better experiences and better health outcomes when provided care by a racially concordant physician. Although this study pertains to the medical field, and is applied directly to racial concordance, the PLP relies on a similar theory: training legal practitioners with similar lived-legal-experiences to their clients will result in better representation and more positive legal outcomes. Individuals with lived experience of the processes and collateral consequences of the law are uniquely positioned to provide more effective, client-focused legal services. There is a level of a self-representation that will inevitably lead to better legal representation. People don’t typically come to lawyers on their best day, but if clients are able to see lawyers, legal advocates, and navigators that have been through what they have been through, there is a greater chance the client will trust them with the difficulties they have experienced.

As it relates to directly transferable legal education, the PLP will ensure that those who secure legal degrees while in prison can fully leverage those degrees upon release. Presently, only nonaccredited paralegal programs are available to those in Minnesota correctional facilities. Though the education obtained through these programs is undoubtedly valuable for those wanting, or needing, to study jurisprudence while in prison, the degrees themselves are limited in scope and carry little weight in the legal discipline upon release.

Finally, the PLP will preserve judicial resources due to the expected increased quality of petitions and briefs filed by those in prison, which, in 2017, comprised 26 percent of the federal docket in the district court alone. This is not to suggest that *pro se* petitions are drafted with anything but the utmost care and craft, but it is to highlight that these petitions are being drafted by individuals who have not had access to the highest standard of legal tools and training, an issue that the PLP helps to eradicate.

## The Firm and Reentry Clinic

Reimagining the legal system requires reimagining the scope, breadth, and mechanics of law firms and legal clinics. Considering the potential licensure and employment issues that come as a collateral consequence of incarceration, the nonprofit All Square Firm (Firm), slated to open in 2022, will employ PLP graduates and implement new pathways for incarcerated legal scholars to engage in the legal discipline.

The Firm will approach law through the needs and expectations of the community we serve and create innovative ways for those with the lived experience to engage in legal work—with or without a legal degree and/or professional licensure. For example, General Rules of Practice, Rule 110.04, provides permitted acts that “self-help personnel,” or non-attorneys, can legally be engaged in. The three buckets of actions established in this law break down a potential employment structure. Entry level employees will be the tip of the spear, trained to educate and direct the community to appropriate legal resources; tasks clarified in Rule 110.04(a). The next level of employees will be engaged in more direct assistance with forms, court scheduling, and other more technical needs that do not require a license. See Rule 110.04(b). Finally, Rule 110.04(c) lays out the prohibited tasks for non-licensed individuals. These tasks would be formal legal services provided by a licensed attorney. Simply put, while this is a relatively new ground, there are avenues through which individuals precluded from licensing may have the ability to engage and assist in legal services.

Given the importance of clinical opportunities for students, the Firm will also partner with Mitchell Hamline’s Legal Assistance to Minnesota Prisoners (LAMP) and Reentry Clinic to provide externships to PLP scholars whether they are actively incarcerated or have returned home. In addition, the Firm will operate as a nexus for impact litigation in partnership with the Clinic and private Minnesota law firms. Efforts in the litigation arena will be aimed at the systemic predatory practices and barriers that currently and formerly incarcerated Minnesotans face, specifically as it relates to bail, housing, and consumer protection.

## HOW YOU CAN HELP

We are calling on the legal community across the state of Minnesota to join us in this transformation.

To help fund the tuition of the first-ever currently incarcerated juris doctorate students, contribute here:  
[allsquarempls.com/legalrevolution](https://allsquarempls.com/legalrevolution)

To sponsor or contribute to the Firm, email: [ASFirm@allsquarempls.com](mailto:ASFirm@allsquarempls.com)

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## Conclusion

As the legal discipline continues to reckon with racialized legal doctrine, statutes, and processes, and the systemic disinvestment of those who have been directly impacted by legal procedures, the community needs the law to do what we’ve been told it *must* do: evolve and change to meet the needs, and the demands, of this era; an era haunted by the heinous murder of George Floyd and countless other Black and Brown citizens whose lives were stolen by the legal system and the powers that perpetuate it.

We submit that this evolution is predicated on ensuring that currently and formerly incarcerated individuals have avenues to ABA-accredited legal degrees, legal licensure, and the legal discipline at large—towards a legal landscape that can be reshaped by the very individuals it has impacted. This transformation will yield the comprehensive reform that our community deserves.

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## Elizer Darris

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Elizer Darris is the Co-Executive Director of the Minnesota Freedom Fund. He works to reduce mass incarceration, reform the criminal legal system and create racial equity.

As a juvenile, he was sentenced to life in prison. But through the study of law, he worked with his state-appointed counsel to get his life sentence reversed on appeal. Upon his release, Darris became a business owner, consultant, educator, community organizer, youth mentor and motivational speaker.



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Emily Hunt Turner is a civil rights attorney with a background in architecture, law, and public policy. She is the Founder and CEO of All Square, a nonprofit social enterprise that invests in formerly incarcerated leaders through an entrepreneurial fellowship and a forthcoming law firm. Prior to All Square, she spent five years as an attorney for the Department of Housing and Urban Development (HUD) tackling issues of housing discrimination and segregation.



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# Building a StoryBrand

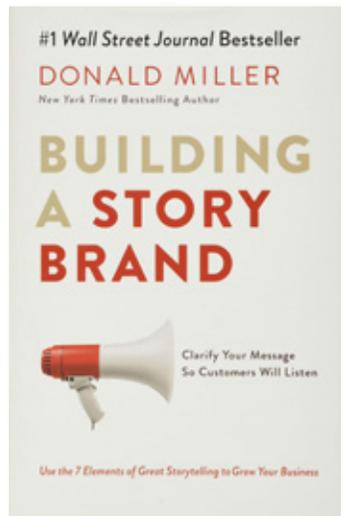
## Clarify Your Message So Customers Will Listen

Summary by Lisa Buck

Whether you are making an elevator pitch, building a website, sending an email blast to clients, writing your bio for a newsletter, or making a presentation—you are selling your brand.

But in the era of information overload, the average adult is exposed to thousands of marketing messages each day. How do you get your brand to stand out?

According to author and podcast host Donald Miller, smart leaders use the power of story to engage audiences and grow their business. Story is a formula which filters out unnecessary information and increases clarity, which attracts customers. In *Building a StoryBrand*, Miller outlines seven elements of storytelling that can be used to create a powerful message that will be heard by potential customers/clients.



Book by Donald Miller

### 7 ELEMENTS OF STORY

#### 1 A CHARACTER

In every story, there is a character who is the hero or protagonist (think Luke Skywalker in *Star Wars*). In business, your customer or client is the hero. Your brand is *not* the hero.

#### 2 A PROBLEM

Every story has a villain. In business, the villain is the problem your client faces. Identify the problem you are helping the client solve, and position your brand as a weapon to defeat the problem.

There are three levels of problems that people experience: external, internal, and philosophical problems.

#### • External Problems

Examples of external problems a client may face include: taxes, debt, criminal charges, divorce, discrimination, injury, business formation, or navigating the legal system.

#### • Internal Problems

An internal problem is the frustration or disruption caused by the external problem. Examples of internal problems include anxiety, confusion, self-doubt, embarrassment, fear, or sorrow.

Most brands try to sell solutions to *external* problems. But people are more motivated to buy solutions to their *internal* problems. Therefore, a smart brand will address potential clients' internal problems in their marketing.

Miller points to several brands that have succeeded by selling a solution to an internal problem:

Mercedes sells cars.

*External problem:* need a car

*Internal problem:* want perceived status, desire to belong to an elite group

CarMax sells used cars.

*External problem:* need an inexpensive car

*Internal problem:* want to avoid negotiating with a used car salesperson

Apple sells computers.

*External problem:* complicated computer interfaces

*Internal problem:* feeling intimidated by computers

Starbucks sells coffee.

*External problem:* need for caffeine

*Internal problem:* want comfort, seek sophistication, desire connection

#### • Philosophical Problems

Perhaps your brand can invite a client into a story that is bigger than themselves, a narrative with a deeper sense of meaning. These narratives may include good versus evil, generosity versus greed, or equality versus inequality.

The author cites some brands that have used their product or service to address a philosophical problem:

TOMS sells shoes. TOMS gives one-third of its profit to grassroots causes to help underserved communities.

*External problem:* need shoes

*Internal problem:* want to look stylish

*Philosophical problem:* everyone deserves a chance at a better life

**"Smart leaders use the power of story to engage audiences and grow their business. Story is a formula which filters out unnecessary information and increases clarity, which attracts customers."**



Tesla sells electric cars.

*External problem:* need a car

*Internal problem:* conventional cars are gas guzzlers

*Philosophical problem:* buying a car should not contribute to pollution

### 3 A GUIDE

In a story, a guide or mentor appears to provide something (usually a service or wisdom) that the hero needs in order to survive and thrive. A guide helps the hero get what he/she wants. For example, in *Star Wars*, Luke Skywalker is the hero and Yoda is the guide.

In business, your client is the hero and your brand is the guide who helps your client get what they want. To be effective, a guide must show *empathy* and *authority*.

#### • Empathy

Empathy shows that you understand the client's pain or frustration. Empathy creates trust.

Examples of statements that express empathy:

"We understand how it feels to ..."

"Like you, we are frustrated by ..."

"No one should have to ..."

"Everyone deserves ..."

#### • Authority

Authority indicates competence and experience, and gains a client's respect. Some ways to demonstrate authority include testimonials by satisfied clients, statistics that show how your firm has impacted clients, awards you received, and logos of organizations that you have advised or helped succeed.

### 4 A PLAN

A plan is like a bridge or path the client must follow in order to succeed. Miller uses an analogy of rocks to cross a creek. The brand must clearly place the rocks where it wants the client to proceed in order to get across the creek safely. Outline the steps the client needs to take in order to do business with you. This often starts with scheduling a consultation.

### 5 A CALL TO ACTION

Inviting the client to take a step is a "call to action." A call to action is where the client goes from merely seeing your brand to engaging with your brand.

The "Buy now" button is a direct call to action. Other examples are "Schedule a consultation," "Learn more," "Call today," or "Register now."

In addition to a direct call to action, a brand can use a transitional call to action, which furthers the relationship with a client who is not ready to buy or schedule. Transitional calls to action usually offer something for free such as a downloadable PDF, a webinar, or a sample product.

### 6 AVOIDANCE OF FAILURE

Show the client what is at stake—what they stand to gain by doing business with you, or what they stand to lose by not doing business with you. For example, Whole Foods helps customers avoid unhealthy food. Walmart helps customers avoid high prices. Allstate helps customers avoid high prices. Allstate helps customers avoid high prices. Allstate helps customers avoid high prices. Identify what is at stake and what consequences you help a client achieve or avoid.

### 7 END IN SUCCESS

Miller says the biggest motivation for making a purchase is the desire to become someone different. People engage a brand to be part of their transformation. For example, a person may want to become financially secure, better equipped for a task, more competent, generous, healthier, wiser, or more popular.

A brand should identify what the client wants to become or what kind of person they want to be. In other words, how does the client want to be perceived by or described by others? This is their "aspirational identity." Identify your client's aspirational identity and associate your brand, product, or service with that identity.

## CONCLUSION

According to Miller, implementing the seven elements of story into your marketing materials will clarify your message, attract potential clients, and help grow your business. To learn more, visit [www.storybrand.com](http://www.storybrand.com).



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# Hot Prospects

*By Eric T. Cooperstein*

**F**or lawyers in private practice, the search for clients is a never-ending quest. Traditional advertising, Google Ads, logo-emblazoned swag, direct mail campaigns, little league jerseys, conference displays, Elks Club meetings—it's that Glengarry Glen Ross compulsion to get the new leads, hopefully without the profanity.<sup>1</sup>

For all the time lawyers spend trying to get the calls and website hits, it's surprising that there is so much debate about what to do with prospective clients once you get them on the line or in your email. Drop by a bar association listserv, the Maximum Lawyer Facebook group, or some other forum, and you will find lawyers frequently trading tactics and techniques for reeling in new clients. How much information should you obtain in the first conversation? Should a lawyer or nonlawyer handle the call? When do you do the conflicts check? Free consults or paid? One size does not fit all.

**Starting Point.** Rule 1.18(a) of the Rules of Professional Conduct defines a “prospective client” as “a person who consults with a lawyer about the possibility of forming a client-lawyer relationship with respect to a matter.” That's pretty broad. A “consultation” with a prospective client (PC) could occur anywhere, at any time. It could be in a Zoom breakout room or at a July 4th socially-distanced picnic. It doesn't matter that the PC has not yet paid you any money or signed a retainer.

The reason the Rules define a PC is to grant those tire-kickers and rate-shoppers limited confidentiality rights. Rule 1.18(b) says that the information you learn in “the consultation,” even if they never darken your door again, cannot be used or revealed except as otherwise permitted by the Rules. It is not clear from these two subparts alone what constitutes a “consultation” that qualifies for this protection. In classic lawyer style, the comments say that some interactions

may not rise to the level of a consultation but it “depends on the circumstances.” Some types of contact are excluded. For example, people who unilaterally dump their legal issues on you in an unsolicited email or voicemail message have not had a “consultation.” But if you invite contact, say through a form on your website, it might be wise to warn PCs that there is no attorney-client relationship until you say there is.

The upshot of this requirement to protect PCs' confidential information is that lawyers need to make sure that the names of PCs find their way into the lawyer's conflicts database. If you're conflict avoidant, that may sound a little daunting. But Rule 1.18(c) provides a limited safety valve. It says that if the information you receive from a PC would not be “significantly harmful” to the PC if you represented someone adverse to the PC, then you will not be conflicted out of representing a future adverse party.

**Intakes vs. Consultations.** Which brings us to the practical questions of how lawyers should handle conversations with PCs. At one end of the spectrum, you could have a “screening” process, which we’ll define here as a relatively brief contact in which the PC provides enough identifying information to perform a conflict check and a minimal synopsis of their situation that gives the lawyer some hints as to whether the lawyer might be interested in representing the PC. The information gathered is so minimal that you probably do not have to worry about whether you have had a “consultation” under Rule 1.18 because there is so little information to protect. The larger the firm, the more necessary it may be to conduct a “screening” as a prelude to a consultation.

Screening limits conflicts issues but the problem that remains is how you close the deal. You have got to convince the client that they should hire you. That likely requires a longer conversation in which the lawyer demonstrates their winning personality, their empathy for the client’s personal situation, and makes their sales pitch. After all, the leads are not worth much if you cannot convert them. There are some lawyers who advocate for keeping the client on the phone as long as possible because they find it leads to a higher conversion rate.<sup>2</sup> Obviously, the more information you gather, the greater the possibility of conflicting the firm out of a future representation even if the PC does not hire you.

**Free vs. Paid.** In some practice areas, lawyers have to sift through a high volume of PC calls. The path to converting those leads may be through free in-person or Zoom meetings, but long initial consultations collectively consume a tremendous amount of lawyer or staff time and they do not all convert: sometimes it turns out that the PC was really just looking for free advice. Or the opposite problem occurs: the lawyer schedules meetings but the clients do not show up.

One way to narrow the funnel to more serious PCs is to charge an initial consultation fee. The fee might be at or below your usual hourly rate, designed to get the PC’s buy-in and relieve you of feeling like a chump if you provide good advice during that consultation. Whether it works for your practice may turn on the type of law. Criminal law, personal injury, and workers compensation attorneys are not likely to charge for an initial consultation. Paid consultations can work for business clients, family law, and

other areas in which the lawyer can both give advice and encourage the PC to retain them at the same time. Be flexible. You can offer paid consultations when you are busy and switch back to free when work slows down.

At the end of the day, just getting the new leads is not enough. Remember your ABCs: Always. Be. Closing.

#### Notes

<sup>1</sup> David Mamet wrote the Pulitzer Prize winning play (1984) and the screenplay for *Glengarry Glen Ross* (1992), which was kind of a mash up of “Waiting for Godot” and a real estate sales agency. Truth be told, it’s one of the only movies I’ve ever walked out on.

<sup>2</sup> Arizona lawyer Billie Tarascio has an online “Intake Training Course” that teaches her philosophy of the lengthy intake or consultation. See <https://modernlawpractice.com/course/intake-for-law-firms/> (last visited Mar. 31, 2021).



**Eric T. Cooperstein**

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

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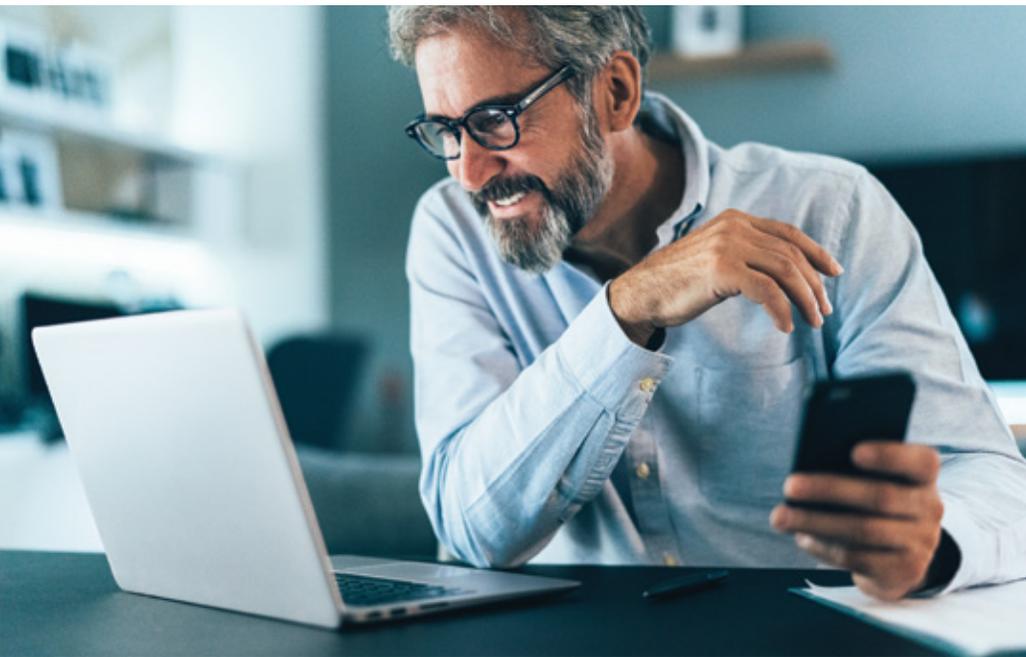
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# Senior Lawyers and Judges Section Plans Launch

By Barbara L. Jones



Okay Boomers, this one's for you. A new HCBA section for senior lawyers and judges will launch this year, not only for Boomers but also for Generations X, Y, and Z. The plan is to bring all of us together in friendship, education and service and we seniors need the wisdom of the young.

"We can all benefit from staying connected," said section chair Kathleen Murphy, a solo family law practitioner in Minneapolis. Murphy envisioned the section and achieved buy-in from the HCBA in 2019. "It wasn't hard since the organization was enthusiastic," said then HCBA President Jeff Baill. "It is a great idea to enable lawyers with common issues about transitioning and aging to share ideas," he said. But he gives all the credit to Murphy.

"She's done the heavy lifting, as she always does," Baill said.

## Expanding interests

Murphy's variety of interests led her to want to serve the profession and it became apparent that tapping into the wisdom and experience of senior lawyers and judges was important. She learned through working with and chairing the HCBA Bar Memorial committee that senior lawyers are very vibrant, centered in the profession in many ways and eager to stay connected. It led her to find a way to address a wide range of professional and social concerns among this group.

"What are their interests now? How can we best channel their wisdom and experience and have their interests addressed as well?" asked Murphy. She reviewed the "outstanding record" of the New Lawyers Section and concluded that the bar needs something for the other end of the professional continuum. She wanted to start on a small scale, and first used a nuts-and-bolts

approach in creating a platform for the section. The first step was bar association approval and by-laws (see sidebar for the by-laws statement of purpose).

## Focus group

The next step was talking with lawyers to gauge their interest, with the help of HCBA leadership, including Baill and current president, Esteban Rivera. They found lawyers and judges didn't want to lose their place in the profession as it continued to change rapidly.

There is ample opportunity for senior lawyers to contribute to the profession, Murphy found. That's prompted by rapid change in technology and the practice of law as well as social needs in the population. "There is so much for them to offer and teach, and they want to stay relevant to the profession," she said. "We can all benefit from staying connected."

Minneapolis attorney Tom Nelson, who organized such events between different generations of attorneys when serving as HCBA president in 2014-15, agreed that there's value in just getting together and telling stories. One of those events included a "switch" where the newer lawyers talked about technology.

Murphy said that another contribution that more senior lawyers can make is their disparate experience in non-traditional law careers. For example, she said, the secretary of the section (and author of this piece) brings writing skills and journalistic experience to the initiative.

And of course, many lawyers want to contribute pro bono work. "This is an opportunity for lawyers to stay connected and do good for the community," said Tom Tinkham, noting that many pro bono organizations provide malpractice insurance.

COVID-19 hit in 2020, which did not stop the individual connections with other lawyers but did turn them virtual. Actually, a pandemic place suited the start-up of the section. “I wanted to start small, it goes much better,” Murphy explained. “You work out the glitches and then expand.” It turned out to perfectly suit the creation of the new section. “Individual success is just as significant as larger scale. Little wins turn into big wins,” Murphy said. With its quarantines and isolation, the pandemic spotlighted the need for the section.

## Launch

The section is planning a virtual Meet & Greet event on Thursday, May 13 with the message “Come and join us,” Murphy said. Plans are also in the works for a panel CLE in June that tentatively titled “Who Am I When I No Longer Do What I Did?”

While challenges may arise from life transitions, “Lawyers who no longer practice full time still have a lot to give and want an opportunity to remain actively engaged with people who have been their friends for years,” said section vice-chair, Cliff Greene, “Sharing their expertise will benefit everyone. We are a valuable resource and [if organized] can make contributions we wouldn’t otherwise be able to do.”

“We’re building a strong leadership team of officers as the next best step,” Murphy said. “So far we have myself, Clifford Greene as vice-chair and Barbara Jones as secretary. This was a major stroke of luck—they are both dynamite. We also have staff liaison Kara Haro with her great organizational skills. We need one more person to step up for leadership.” (If interested contact Haro at [kharo@mnbars.org](mailto:kharo@mnbars.org).) The aforementioned June CLE will also feature elections for the upcoming bar year, where members will have an opportunity to vote on the proposed slate of officers.

Murphy met with the leadership of the senior division at the ABA who were very helpful and confirmed that the connectivity of the membership strengthens the ABA. “There is great opportunity to broaden the HCBA,” Murphy said.

The ABA automatically includes its senior lawyers in its Senior Lawyers Division, which now totals nearly 50,000, according to its website. The division, active since 1986, offers a playbook of potential section programming. It hosts summits and webinars on topics such as elder law, succession planning, retirement planning, switching to part-time, handling transitions, mentoring and pro bono service, along with other senior-well being topics.

When asked what the section will look like in the future, Baill said the goal is to provide an opportunity to bring people together because lawyers have a lot in common. He anticipates a robust section with a lot of members and interesting programs.

Current HCBA President Esteban Rivera said that keeping lawyers connected to the profession and the bar associations is beneficial not only to the senior lawyers but also for new lawyers coming along. They also have information to share with senior lawyers, he pointed out.

“It is also good for the bar associations, where membership has declined,” Rivera said. In fact, the new section began to take shape at a time when the HCBA reduced its fees for retired attorneys and judges. “This fit in perfectly,” Baill said.



**Barbara Jones**

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Barbara Jones has been a member of the Minnesota bar since 1982. She is also a writer and editor, and formerly the editor of *Minnesota Lawyer*.

## New Section Virtual Meet & Greet

See your friends and plot your future!

Thursday, May 13, 2021  
4:30- 5:30 PM | Zoom

Register and find out how you can get involved:  
[www.mnbar.org/cle-events](http://www.mnbar.org/cle-events)

## From the Senior Lawyers and Judges Section by-laws

The purpose of the Section shall be to further the Association’s purpose and goals, including:

- Service to the community and the legal profession by utilizing the extensive knowledge, experience, and wisdom of Section members to guide and serve for the common good;
- Represent senior lawyers and judges in the Association and represent the Association to them;
- Help shape the policies and priorities that affect senior lawyers and judges and the legal culture in which they function; and
- Create a deliberative forum for the exchange and expression of senior lawyers’ and judges’ views and a voice to advocate those views.

# 2021 Bar Memorial

The longer I serve on the HCBA Bar Memorial Committee, the more poignantly am I aware that tragedy, aging, and death are inescapable. Leaving life here on earth is our final act of living. The HCBA Bar Memorial helps ensure that our deceased colleagues' final act is honored and celebrated. Indeed, this Fourth Judicial District special court session has been taking place for over 100 years—the longest running Bar Memorial in Minnesota. Another historic moment happened when the first-ever *virtual* HCBA Bar Memorial happened earlier this year, in the middle of a raging pandemic.

This extraordinary track record is due to the efforts of many dedicated attorneys, judges, staff, and administrators. Collaboration between the Hennepin County Bar Association and the Hennepin County District Court is one key. For this we are grateful, especially for Chief Judge Toddrick S. Barnette's leadership. The other key is the HCBA Bar Memorial Committee. These lawyers and judges volunteer hours of time assisting the families who wish to have their loved one memorialized. Every family is unique, as are the circumstances of every passing. Hence, our committee members navigate the family's emotions, both happy and sad, and help shepherd them through the memorial writing process.

The 2021 session was held virtually on April 30, 2021. With any luck, we will once again gather in person for next year's session. As we plan for 2022, please let us know of any Hennepin County lawyers and judges who pass away in 2021. And last, we can always use more Bar Memorial Committee members. The need is growing. The privilege of helping a family through a loved one's final act is the greatest reward. For more information, contact Sheila Johnson at [sjohnson@mnbars.org](mailto:sjohnson@mnbars.org) or 612-752-6615.

*Kathleen M. Murphy*  
Chair, Bar Memorial Committee

Watch the recorded April 30th memorial session at:  
[www.mnbar.org/hcba-bar-memorial](http://www.mnbar.org/hcba-bar-memorial)

**Invocation:** Judge Martha A. Holton Dimick  
**Main Address:** Justice Natalie E. Hudson, Minnesota Supreme Court

## Memorialized

Hon. Russell A. Anderson

John Angell

Thomas H. Bennin

Peter Holmes Berge

Bruce Winthrop Blackburn

James 'Craig' Boone

Hon. Robert E. 'Bob' Bowen

Conrad James Carr

Debra Kuipers Erickson

James Lee Fetterly

Robert L. Findorff

Donald MacKay Fraser

Robert 'Bob' Gyurci

Robert E. Harding

James Everett Hart

Melvin D. Heckt

Kyle Jason Hegna

Stephanie M. Helgesen

Thomas Earl Hoffman

Hon. Doris Ohlsen Huspeni

Jerome R. 'Jerry' Jallo

Thomas L. 'Tom' Johnson

Sidney 'Sid' Kaplan

Hon. Alexander Macdonald  
'Sandy' Keith

Stephen A. Krupp

Bradley Dean Lance

Richard G. 'Dick' Lareau

Judith 'Judy' Martin

Phillip H. Martin

Dennis 'Matt' Mathisen

Gary Donald McDowell

Pierce Aldrich McNally

Hon. John C. McNulty

C. Robert 'Bob' Morris

Russell Alph 'Russ' Norum

Brian Boru O'Neill

James Robert 'Jim' Pielemeier

John Harold Ramstead

Larry Rapoport

James Grogan 'Jim' Ray

Malcolm Dennis Reid

Hon. Sean Jerome Rice

Lawrence Michael Rocheford

Jerry F. Rotman

Ralph S. Schneider

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Roger W. Sherman

Dale Adair Simonson, Sr.

Norman Ross Soland

Sue Stingley

Michael Allan Tracy

John P. Weinard, Jr.

Gary Robert Wolf

Michael William Wright

Paul Gregg Zerby

Richard 'Dick' Ziegler

# Member News



Bassford Remele announces that **Sarah M. Hoffman** has been elected to the firm's board of directors, and **Jonathan P. Norrie** and **Janine M. Loetscher** have been elected to its compensation committee.

Larkin Hoffman announces that **Bryan Huntington** and **Jacob Steen** have been elected as shareholders of the firm.

Winthrop & Weinstine announces the addition of two new associate attorneys, **Olivia Cooper** and **Devon Holstad**.



Henson Efron announces that **Stuart Williams** was re-elected president of the Minnesota Board of Pharmacy for 2021 and was re-appointed to a three-year term on Minnesota's Drug Formulary Committee.

Honsa & Mara announces that attorneys **Deborah Gallenberg** and **Kari Kanne** have been named partners.



Submit your HCBA member news to [thl@mnbars.org](mailto:thl@mnbars.org) for consideration.

## THE DOCKET

# Events and Meetings

All events are being held virtually. Visit [www.hcba.org](http://www.hcba.org) for more information.

### MAY 4

**Business and Securities Law**  
Transition Planning for Closely Held and Family-Owned Businesses

### MAY 5

**Environmental Law**  
PFAS - Current Developments and Future Direction

### MAY 13

**Senior Lawyers & Judges**  
New Section Virtual Meet & Greet

### MAY 27

**Probate and Trust**  
A Demonstration of CLE Wills

### CLE ON DEMAND

[mnbar.org/hcba-on-demand](http://mnbar.org/hcba-on-demand)

Calling all HCBA member writers, poets, artists, and photographers. We want you to be a part of our upcoming art and the law issue of the *Hennepin Lawyer*.

Submit your entries in the following categories to be considered for publication in our July issue of the *Hennepin Lawyer*.

- Short stories
- Creative Nonfiction
- Poetry
- Photography
- Art (Send via .jpg)

Please email submission to [thl@mnbars.org](mailto:thl@mnbars.org) by May 15.



# 10 QUESTIONS

## with Allison Cole

3L University of St. Thomas School of Law

### 1 Why did you decide to go to law school?

Both my mother and sister are lawyers. I resisted the urge to follow the “family business” but I always knew that I would be a lawyer like my mom. My attraction to the law is based in my desire to advance fairness and justice.

### 2 What was it like going to law school during a pandemic?

Going to law school during the pandemic was surreal. I thought it was going to be temporary. I never imagined I would still be attending law school virtually a year later.

### 3 You were a legal extern at the U.S. District Court and you are currently a law clerk at Barnes & Thornburg. How have these experiences prepared you for life as an attorney?

My time at the U.S. District Court gave me the opportunity to work and shadow a great mentor. The most valuable take away came from my observation of the broad and diverse style and approaches of the various lawyers who appear in the District Court.

As a law clerk I have had the opportunity to work on a broad range of assignments. This has provided me a foundation and a springboard as I start my career as an associate.

### 4 Did anything surprise you? What did you learn in court or at the firm that they didn't teach in law school?

What surprised me was the personal journey I encountered. Law school has required me to exercise patience, persistence, and endurance. As an extern and law clerk I received the practical experience to solve real life legal matters. Law school gives you the tools and shows you how to apply them, but when it comes to real life matters it's a different experience.



### 5 What do you like to do when you aren't working or studying?

I love working out and spending time being active. I grew up singing, dancing, and playing the cello, so whenever I find time, I also go to the orchestra or a play.

### 6 As an undergraduate at Oberlin, you majored in politics. Do you have any political aspirations?

Right now, I am focusing on becoming the best associate and lawyer I can be. At this point I haven't given any serious thought to it, but I never say never.

### 7 What are you reading these days?

I am currently reading *Becoming* and *A Promised Land*. I also just finished reading *Thinking, Fast and Slow* by Daniel Kahneman.

### 8 What is your go-to way to cope with stress?

My favorite way to cope with stress is indoor cycling. I fell in love with cycling two and half years ago. It's a great way to step away, have fun, and refocus.

### 9 Where do you see yourself 10 years from now?

I hope to be a lawyer that people trust. I would like to become an integral part of the continuing efforts to create a stronger and diverse legal community. I am dedicated to serving my profession and community. And I hope to develop the strength and qualities to be that kind of lawyer.

### 10 Sum up your life in 3 hashtags.

#FitLife #AttitudeOfGratitude #FaithFamilyFun

(Photo credit: Meghan Swanson)

# We Know Lawyers

When current clients or new callers to your office have legal needs outside of your practice area, know that your bar association colleagues are here to help.

With over 200 participating attorneys—representing nearly every practice area—the Hennepin and Ramsey County Bar Associations' **Minnesota Lawyer Referral and Information Service (MNLRIS)** is the best place to direct those with legal matters you are unable to assist.

Make referrals with confidence. Provided as a service to member attorneys and the community, MNLRIS is recognized for its quality by the American Bar Association. With over 1,200 contacts every month, we've clearly made a name for ourselves.

When it comes to serving the legal community and the public, we're the name to know.

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## Joining the Human and Electronic Elements Together

**Computer Forensic Services (CFS)** and **360 Security Services (360)** are two organizations with one mission: To address your investigative and security needs.

Our digital landscape has dramatically increased the amount and quality of information that is useful to investigations. While electronic information can prove to be the most important factor to consider, it is still one factor. For this reason, Computer Forensic Services ([www.compforensics.com](http://www.compforensics.com)) is proud to announce its new strategic partnership with 360 Security Services ([www.360security.services](http://www.360security.services)).

360 takes a holistic approach to conducting investigations. 360's team is comprised of former federal & state investigators and security professionals who possess an array of experience, ensuring clients receive the targeted expertise they need. 360's diverse team together with CFS is positioned to assist with a variety of investigations including, but not limited to:

- Financial, tax, and complex fraud (forensic accounting);
- Employment and backgrounding;
- Personal injury;
- Corporate espionage;
- Family (custody, marital dissolution);
- Criminal (financial, cybercrime, extortion, stalking, violent offenses);
- Investigative and security auditing.

The strategic partnership between CFS and 360 provides clients with a comprehensive and seamless team-based approach to investigations and security.