

July / August 2020 Volume 89 Issue 4

Official Publication of the Hennepin County Bar Association

HENNEPIN LAWYER

A portrait of Chief Judge Todd S. Barnette, a Black man with a goatee and glasses, smiling. He is wearing a blue suit jacket, a white shirt, and a blue and gold striped tie. The background is a blurred wall with pink flowers.

**Chief Judge
Todd S.
Barnette**

+ Focus on Courts



For your practice,
For your career,
For making a difference
in the community.

SOCIAL EVENTS

Catch up with colleagues, create connections, and add balance to your work life at HCBA networking socials, club meetings, and other events. Expand your professional network, social circles, and referral base.

COMMITTEES SECTIONS LEADERSHIP

Improve your practice and help shape the legal profession—one meeting at a time. HCBA provides you with leadership opportunities and development, skills training, mentoring, and forums to exchange ideas. Plus, there's no fee for members to join HCBA sections.

FREE CLEs

Members can attend most HCBA 1.0 credit CLEs and live webcasts at no additional charge. Non-members pay \$40+ for seminars. Attend just 6 CLEs during the 2020-21 bar year, and membership can save you \$240. Plus, get discounts on most On Demand CLEs and multi-hour programs like the Law Firm Leadership series. HCBA keeps you up to date with the latest professional developments.

HENNEPIN LAWYER

HCBA's membership publication features substantive law articles, practice tips, profiles, and news that local lawyers rely on. Subscription is included with your membership.



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Make the Most of
Your Membership at
www.hcba.org

Serving local attorneys, representing
the profession, and working to ensure
the fairness and accessibility of the
legal system since 1919.

Your membership makes it happen.



Serving as the charitable arm of the HCBA, the Hennepin County Bar Foundation promotes access to justice within our community through its annual distribution of grants to local legal services organizations.

Thanks to the dedicated commitment and contributions of HCBA members like you, the foundation has been making a positive impact in Hennepin County since 1968, giving over \$2.5 million in grants to law-related nonprofits.

MINNESOTA Lawyer Referral

Our Lawyer Referral program—renamed and expanded as the Minnesota Lawyer Referral and Information Service—has been serving the profession and public for 70+ years, by helping individuals connect with and hire attorneys. Lawyer Referral is the best place to direct those with legal matters outside your practice.

In addition to helping 10,000+ callers each year, Lawyer Referral coordinates with Hennepin County District Court to ensure that attorneys are available to assist the public at the Court's Legal Access Point and at Misdemeanor Court arraignments. Your bar membership supports this valued public service.



The Volunteer Lawyers Network is the pro bono arm of the HCBA and provides civil legal services to low-income people in our community. In its commitment to access to justice, the HCBA provides a variety of services for the public through its own programs and through support of VLN—made possible by your bar membership.

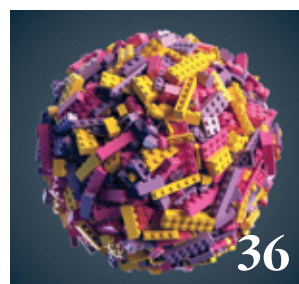
YOUR CONNECTION TO:

Local Lawyers • The Fourth District Bench • New Clients & Contacts • Practice Management Resources • Community Outreach and Pro Bono

- FREE 1.0 credit CLE programs will be available for the 2020-21 year. Plus, additional training sessions and webcasts, with discounted registrations for members.
- Plug in to mentoring and networking opportunities for every stage of your career.
- Gain management and leadership experience through committee work and projects, including diversity initiatives, programs supporting professionalism, and access to justice.
- Events and socials connect you with attorneys (from within and outside your areas of practice), members of the bench, and others. Expand your contacts and referral network.
- Members interact with the Fourth District Court Bench through events, training, and advocacy efforts.
- Member clubs let you connect to attorneys with shared interests (such as yoga, biking, and photography, etc.).
- The *Hennepin Lawyer* magazine keeps you in the know about the law and local legal community and more, and gives you an opportunity to showcase your expertise.
- Legal education and outreach programs, support the Hennepin County community.
- A weekly e-newsletter provides you with updates and an events calendar so you will always be tuned in to what's happening in the local legal community.
- The HCBA website provides even more opportunities to create connections and maximize your membership.

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HENNEPIN LAWYER

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Reform It. Change It. Pass It On.

I am a judge. As a judge many of my days are spent in the courtroom. I have the honor of watching some of the best lawyering and creativity on a daily basis. Every day, I have the pleasure of seeing litigants, lawyers, and others come into the courtroom. When the *Hennepin Lawyer* committee planned this issue of the magazine, we were excited about exploring the various aspects of the courtroom experience. We sought out authors in an attempt to paint a full picture of the courtroom experience, and provide practice tips. Between that initial meeting and this edition being brought to you we have had a significant shift in our daily lives. First, we came face to face with a global pandemic which fundamentally altered every aspect of our lives including the courtroom experience.

This courtroom issue of the *Hennepin Lawyer* starts with a Zoom interview with new Hennepin County District Court Chief Judge Toddrick Barnette. Judge Barnette shares his vision for the Hennepin County Court and his journey to becoming the first person of color to be chief judge of a district court in Minnesota. Referee Jason Hutchinson writes on remote hearing and how to adapt to our new normal. This article provides practice pointers from a judicial officer's perspective and wrestles with the fact that the COVID-19 pandemic has significantly changed how courts do business. Judge Kevin Burke discusses cameras in the courtroom and how we can foster openness and transparency. Rayeed Ibtesam provides practice pointers for attorneys litigating cases against self-represented litigants. Sheri Stewart shares her experience in the alternative dispute resolution (ADR) process. Ms. Stewart examines and provides valuable insight for attorneys practicing in this process. Finally, Christine Funk writes about the use of forensics in the courtroom.

I started this article with the statement that I am a judge, however to add more context to that statement, I am a black judge. My experience as a black man in America has shaped my world view and formed me into who I am. We do not live in a vacuum. We cannot separate the courtroom experience from lived experiences. I am sure that if you are reading this magazine you have probably seen the multiple videos of George Floyd's murder. I do not see the need to rehash the trauma of the visual of seeing another unarmed African American's life snatched prematurely. The tragedy elicited outrage, anger, and profound sadness for many, including myself. This is an all too familiar feeling. Rodney King, Tamir Rice, Michael Brown, Eric Garner, Breonna Taylor, Walter Scott, Botham Jean, Atatiana Jefferson, Sandra Bland, Jamar Clark, Philando Castile, and many others remind us that not everyone's experience in the justice system, from the police stop to the court sentencing, has been unbiased and fair.

America has a history of systematic and pervasive racism. We do not know how to talk about race, and even worse, we have all too often perpetuated the racism through our inaction. Race is ever-present in the justice system and the courtroom. Both explicit and implicit bias colors the laws legislatures create, prosecutors enforce, defense attorneys defend, the decisions that judges make, and the verdicts jurors reach. The recent events tell us one simple truth: people are sick and tired of being sick and tired. People are fed up, and are not ok with excuses and inaction.

What does this have to do with the courtroom edition of the *Hennepin Lawyer*? In the spring of 1978, Supreme Court Justice Thurgood Marshall gave the commencement address to the University of Virginia. He told the graduates, "Where you see wrong or inequality or injustice,

speak out, because this is your country. This is your democracy. Make it. Protect it. Pass it on." This commitment to speak up and act out is a commitment that is missing in the legal system and in the courtroom. My simple charge to the readers of this magazine: speak out! This is your courtroom, your justice system. Reform it. Change it. Pass it on.

These articles task you to think about the issues you face in the courtroom. The recent events in our community challenge you to think about what you can do to address the biggest challenge facing our system, truly providing equal justice for all. Whether you are a partner or associate at a large law firm, a small or solo practitioner, a legal aid attorney, a prosecutor, a public defender or defense attorney, or in a corporate setting, this is your issue, it is all of our issue. Enjoy these articles and ... Black Lives Matter.



**Judge
JaPaul
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.

Serving in Interesting Times

As my term as president comes to an end, I look back and see a tale of two different versions of my administration. In the first part of the 2019-2020 bar year, we worked hard on the normal life of a bar association. During the second phase, we rode the wave of an international crisis with major consequences on a national and local level. Many of our key programs have been postponed or cancelled for this year. We all await next year with trepidation as the future is hard to predict from where we currently sit.

We started the bar year with a response to a request from the Minnesota Supreme Court to respond to the mental health crisis affecting lawyers throughout the country. Our HCBA task force came back with many suggestions for actions that the HCBA could take to begin to address the issue. Our board has taken steps to implement the recommendations and future boards will continue to act. During the current crisis, the need for action becomes even more important.

The association's New Lawyers Section was charged with creating a task force to study what the HCBA can do to build stronger relationships with new lawyers and to identify ways that encourage them to stay involved in the bar as they advance out of the section. The task force completed a deep dive into the charge and made concrete recommendations, which they recently delivered to the board. The next board has been given a road map for action to meet the needs of young lawyers in Hennepin County so that our newest generation of lawyers sees the benefits of continuing active involvement with the HCBA.

Our Finance and Planning Committee spent part of the year reviewing our mission statement. The statement, which had not been reviewed

in a couple decades, needed to be tweaked to more accurately reflect the current mission of the HCBA. After working on many drafts and seeking input from the Executive Committee and the Board, the new mission statement was adopted. Our new mission statement reads:

The HCBA is a welcoming community of lawyers who advocate for the profession, foster access to justice, and provide members with support at every stage of their careers.

This statement is a brief explanation of what our organization strives to be. We have a more extensive explanation of what this means, but the shorter, more concise mission statement is a quick way to tell people what the HCBA is all about.

Some of our initiatives have been delayed by the crisis that descended upon us. A new section has been formed to serve lawyers who are approaching retirement or have retired but want to connect with lawyers who are similarly situated. This new section will provide valuable services to a growing part of our population.

Our Leaders Impacting Nonprofit Communities (LINC) program, which teaches lawyers how to be valuable members of nonprofit boards, was postponed.

Our Bar Memorial service has been postponed until we can gather safely to memorialize our colleagues who we lost last year.

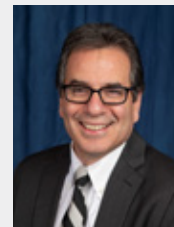
Our Annual Meeting, where we honor award winners and celebrate our incoming officers, was also cancelled. We will honor our award winners in person at an appropriate time in the future.

I do want to thank my fellow board members and officers for all the work they provided to

the association over the course of the year. Their ongoing commitment and countless hours spent behind the scenes keeps our association going. Most of our members have no idea how much work is performed by our volunteers. I have seen it firsthand and can report that we would be a very different organization without it.

I also want to thank the staff for all the great work they do for our members. A lot of hard work has been put in by the staff to continue the progress we are making after the merger of the Hennepin, Ramsey, and State Bar staffs last year. That merger will continue to pay benefits as we move into the future. I would like to particularly thank our CEO Cheryl Dalby for all the support she has provided me over the last year.

Our bar association, as well as all other bars, face tough challenges in the coming year. I feel confident that with our corps of volunteers and staff, we will be able to navigate through these difficult waters. Thank you all for the opportunity you have given me to serve.



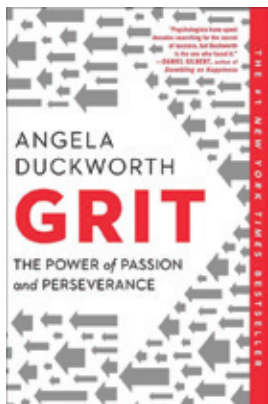
**Jeff
Baill**

2019-2020
HCBA President

jbail@yostbaill.com

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

Hennepin Lawyer is launching a new feature highlighting emerging research and best practices on “soft skills”: those traits and habits that are intangible and hard to measure, but crucial to career success. Our inaugural column focuses on resilience.



Grit: The Power of Passion and Perseverance
by Angela Duckworth

Getting Gritty

by Lisa Buck

What do you think is the best predictor of success? If you said high IQ, you'd be wrong. Natural talent? Wrong again. Standardized test scores? No. According to psychologist Angela Duckworth, the most reliable predictor of achievement is grit.

In her book *Grit: The Power of Passion and Perseverance*, Duckworth explains that grit, defined as passion and perseverance for long-term goals, is what really drives success. In simple terms, to be gritty means to resist complacency.

In examining the psychology of success, Duckworth studied high achievers including scientists, musicians, Olympic athletes, Green Beret soldiers, bestselling authors, entrepreneurs, artists, and even winners of the National Spelling Bee.

Her research shows that grit has two components: passion and perseverance.

Passion is not obsession or intensity; rather it is consistency over time. Passion is sustained, enduring devotion to a goal. Duckworth likens passion to a compass that directs you to where you want to be. Gritty people tend to have an overall goal (compass), and most of their actions are in some way or another related to that goal. In gritty people, passion is a combination of pleasure (interest) and purpose (intent to contribute to the well-being of others).

Perseverance, the second component, means endurance and bouncing back from setbacks. It is quiet determination to stick to a course once decided upon even in the face of obstacles.

High achievers don't simply log more hours of experience or practice, they do it differently and deliberately. A gritty person seeks to improve

their skills by identifying a challenge that exceeds their current level of skill, practicing it with full concentration, seeking feedback, refining their actions, and repeating again and again over time.

Duckworth developed a “grit scale,” a set of questions to reveal how gritty a person is. According to Duckworth, a grit score can predict job retention, graduation rate, and other markers of success.

Grit is not fixed, however; it can change. Duckworth suggests you can grow your grit by cultivating an interest and developing a ritual of deliberate practice. She suggests using a tactic employed by Warren Buffett. First, write down 25 career goals. Second, circle the five highest-priority goals. Third, take a look at the 20 goals you didn't circle and avoid these at all costs, as they will distract you from your primary goals.

Duckworth admits that grit is not the only ingredient to success. Talent, intelligence, and opportunity play a role, but her research suggests that grit trumps these factors.



**Lisa
Buck**

buck.lisamarie@gmail.com

Ms. Buck practiced corporate law in Minneapolis and was an adjunct professor at William Mitchell College of Law. She contributes to the *Hennepin Lawyer* and serves on the board of the Hennepin County Law Library. She is also a coach of a local high school speech team.



The Hennepin County Bar Association recognizes eight attorney members with its 2020 HCBA Excellence Awards. The awards honor members for their service to the local legal profession, the community, and the association. The HCBA selected eight members for their work from among six categories. The Hennepin Lawyer asked them to reflect on their careers and contributions.



Mentoring in the Profession

RACHEL HUGHEY

Merchant & Gould

Hughey has been a steadfast advocate for advancing women in the profession through mentoring, board service, and inviting newer attorneys to take part in meaningful work.

What is one piece of cherished advice you have received from a colleague, mentor, or loved one?

As a law student, I had the incredible fortune of externing for Chief Judge James Rosenbaum of the District of Minnesota. That experience had a profound impact on me and my career, including motivating me to clerk for Federal Circuit Judge Alvin A. Schall after law school—another extraordinary experience. I have continued to learn so much from Judge Rosenbaum over the years, and he has given me a lot of excellent legal/life advice. Something he told me that I remind myself of often is, and I'm paraphrasing, "You can only do your best."

Share one meaningful moment that you have experienced over the course of your career.

I recently worked with a team of newer attorneys on a pro bono immigration case, representing a family from El Salvador in their asylum matter. I supervised three associates over many months as we prepared the case and presented it before the immigration judge. Two of the associates had never presented evidence at an evidentiary hearing, but all three of them did a masterful job and we ended up winning the case and securing our client and her children's safety. I felt so proud of the amazing work my team did, and it was so wonderful to be able to achieve justice for our client and her family, who would otherwise have been sent to their deaths. I think that will be a hard moment to top in my career.

What made you want to become a lawyer?

I come from a family of engineers. Both my grandfathers were engineers, and my mother is an engineer. So, from the time I was little, that was my expected path. When I entered high school, I realized I really liked to read, write, and debate, so I made the decision at that point to do both science and law as a patent lawyer. I never looked back.



Providing Pro Bono Service

EVAN BERQUIST

Cozen O'Connor

Berquist has dedicated significant time to pro bono efforts involving technology education for disadvantaged youth in Minnesota and East Africa. He also won a federal court case that allowed First Lutheran Church to keep operating a shelter for individuals who are homeless.

What is one piece of cherished advice you have received from a colleague, mentor, or loved one?

My dad often says: "Don't get too high, don't get too low." He got that from watching the Minnesota Twins and their former manager, Tom Kelly. Apparently, this was one of Kelly's favorite sayings. I find this perspective helpful in my own life too. Everyone has their ups and downs. I try not to dwell too much on the past or the future, and just focus on how I show up each day.

Who (or what) inspires you in your pro bono or volunteer work?

My clients inspire me. Just meeting people and hearing their stories. Through pro bono and volunteer work, I've gotten to build relationships with some truly remarkable people. I learn so much from my clients. They give me hope. Most of my pro bono clients are very service-oriented. They dedicate their lives to helping others, wherever they're at. There's a multiplier effect in working for that kind of client. Whatever assistance you give them, they pay it forward tenfold in the work they do for the community.

What's one "big idea" for the local legal community you'd love to see take hold?

I would love to see more attention paid to the 100 million (annual) legal problems in this country that never receive any attention ever from a legal professional of any kind. Specifically, legal problems involving basic needs: things like landlord-tenant disputes, access to benefits, custody and divorce matters, etc. If these really are "access to justice" problems (and I think they are), then we need some big and bold thinking about how to address them. Tinkering around the edges just won't work.



Providing Pro Bono Service

Kathryn Johnson and Kirsten Schubert
Dorsey & Whitney

Johnson and Schubert are pro bono leaders at their firm. They devoted nearly a decade of work to overturning the death sentence of a man, Bruce Webster, with an intellectual disability who was wrongly put on death row.

KATHRYN JOHNSON

What is one piece of cherished advice you have received from a colleague, mentor, or loved one?

A mentor has frequently reminded me that we are people first. It is a reminder to take care of myself—my physical, mental, and emotional needs—but also a reminder to consider the human motivations of witnesses and factfinders as I seek to persuade.

Who (or what) inspires you in your pro bono or volunteer work?

"Not if—when" is something one pro bono client always tells us when we discuss the trajectory of the case. This perpetual hope and faith—in the face of seemingly insurmountable barriers—is a constant source of inspiration. It is a reminder to remain hopeful, get creative, and never give up on a righteous cause.

Share one meaningful moment that you have experienced over the course of your career.

I will never forget the feeling of telling our client that, after more than 10 years of litigation and more than 25 years on death row, his death sentence was overturned by the court. Until that moment, I understood intellectually what we were trying to accomplish, and passionately believed in the importance of our work. That moment made clear the human impact of the work we do, and the importance of remembering that and seeking opportunities to use the skills and immense resources at my disposal to make a real difference.

What made you want to become a lawyer?

I decided I wanted to be a lawyer while sitting on a criminal jury in college. The process of serving as the factfinder in a criminal proceeding was eye-opening, but the piece that stuck with me was how the attorneys framed their cases and presented the evidence, and the way their arguments framed—or didn't frame—our deliberations. I knew I wanted to do that.

KIRSTEN SCHUBERT

What is one piece of cherished advice you have received from a colleague, mentor, or loved one?

Don't doubt yourself.

Who (or what) inspires you in your pro bono or volunteer work?

My partner Steve Wells brought me into the Webster case when Dorsey was first retained. He has said from the beginning that people who push back on injustice will eventually prevail. This principle has driven me to push through each loss (and we've had many) and remain focused on our ultimate goal—to free an intellectually disabled man from death row. In every aspect of my practice, he has driven me to look for creative answers, craft novel arguments, and to find each client's compelling story.

Share one meaningful moment that you have experienced over the course of your career.

We were sitting in the Seventh Circuit ceremonial courtroom, waiting to begin our en banc argument in the Webster matter. I was a senior associate, and when I looked around at the 15-foot tall portraits of all of the judges who have served on the Seventh Circuit, I realized that I was in a special moment that few people experience: we were about to argue to a panel of 11 judges for the adoption of a new, precedent-setting rule which would allow our client to test the constitutionality of his death sentence, after 20 years on death row. Winning the appeal changed the life of my client, but that moment in the courtroom changed my life as a lawyer.



Improving Access to Justice

LUKE GRUNDMAN

Mid-Minnesota Legal Aid

Grundman has been instrumental in growing the work of MMLA's Minneapolis Housing Unit and increasing representation for low-income clients in housing matters.

What is one piece of cherished advice you have received from a colleague, mentor, or loved one?

Put a picture of your loved one next to the brief you're writing, or tuck one into your notebook before trial. It will remind you, when you need it most, why you're working so hard.

Share one meaningful moment that you have experienced over the course of your career.

My client brought me five neckties after a successful outcome in a long, drawn-out case to save her home and prevent her homelessness. She said that all the others I wore during the course of her case were covered with pizza sauce and coffee stains.

What made you want to become a lawyer?

I want to make the world a little more just. Our judicial system expects parties to have lawyers; it creates uncountable roadblocks for those who do not. But when people face profound, life-altering events—the loss of their homes, their children, their rights to be in this country, their freedom from violence and fear—they are left to deal with the judicial process alone. To them, in those moments, courthouses are threatening, scary places. But they're not scary to me. I owe the privileges I've received to do everything I can, spend every moment I can, to make things better for them.

What's one "big idea" for the local legal community you'd love to see take hold?

Civil Gideon—the right to counsel—at least when it comes to major, life-altering events: The loss of children in custody disputes, immigration deportation, the loss of homes in evictions, and lawyers to help break abusive relationships. All these require complicated legal proceedings. But most parties lack lawyers. Judges and everyone else will benefit if we provide them. Taxpayers will save money; lives will be protected.



Mentoring in the Profession

SATVEER CHAUDHARY

Chaudhary Law Office

Chaudhary is a dedicated mentor to new attorneys through involvement with community groups, bar association activities, and job shadowing.

What is one piece of cherished advice you have received from a colleague, mentor, or loved one?

I am grateful for every piece of advice received from colleagues, mentors, friends, and loved ones. It all has shaped who I am. But one standout is from Bob Burg and John Mann in *The Go-Giver*, "Your true worth is determined by how much more you give in value than you take in payment."

Who (or what) inspires you in your pro bono or volunteer work?

Legal Aid lawyers and public defenders. I feel small every time I watch them work. Handling a pro bono case is the very least I can do compared their sacrifices.

Share one meaningful moment that you have experienced over the course of your career.

A client once said, "I never even realized I deserved justice until you helped me."

What made you want to become a lawyer?

I wrote this in my law school application and am gratified it still applies today. "I want the tools to operate within society, and learn how to use them, so I can bring justice to those who need it."

What's one "big idea" for the local legal community you'd love to see take hold?

To be a good mentor, one must have a mentor. I'm so lucky to have had mentors who've guided me through thick and thin. Because they themselves want no remuneration, I can only repay my mentors by passing on what I've learned.



Improving Access to Justice

CHERI TEMPLEMAN

Templeman Law

Templeman has provided numerous hours of legal services to persons civilly committed at the Minnesota Sex Offender Program.

What is one piece of cherished advice you have received from a colleague, mentor, or loved one?

My grandfather moved to the United States as a young man and worked as an engineer. He was kind, open-minded, and showed compassion to all. His advice was to have a positive attitude and to not judge others—advice I have taken to heart and that has served me well throughout my career—both as a nurse and a lawyer.

Who (or what) inspires you in your pro bono or volunteer work?

My inspiration for pro bono work dates back to my days as a law student at William Mitchell, where Professor Eric Janus accepted me into their Law and Psychiatry Clinic. This clinic uses a team model of medical and legal professionals to provide free forensic psychiatric and psychological examinations to civilly committed persons. This experience was life-changing for me and inspired me to join the civil commitment Resident Advisory Committee. This committee worked to address issues involving indefinite commitment. Here I learned several civilly committed persons had never filed a petition for a reduction-in-custody hearing—the process that evaluates whether the client can be moved to a lesser restrictive environment or discharged entirely. The petition also triggers the process for client risk assessments and evaluations. I started my pro bono work by filing these petitions for clients and helping them to understand the process. I continue my pro bono work with civilly committed clients; last year alone I provided over 100 hours of pro bono legal services to clients in need.

What's one “big idea” for the local legal community you'd love to see take hold?

I'd like to see that children and young adults receive increased access to needed mental health assessments, services and monitoring so issues can be addressed and treated before they become overwhelming. Hopefully this will result in fewer criminal and civil commitment cases.



Serving the Association/Foundation

ALLISON PLUNKETT

Henson & Efron

Plunkett has created connections in the HCBA through running the summer softball league and serving on the HCBF Golf Classic Committee.

Who (or what) inspires you in your pro bono or volunteer work?

My father, Pat Plunkett. My father is also an attorney and has always been very generous with his time. For years, he has dedicated his time and helped various and diverse communities, including churches, schools, nonprofit organizations, the Ramsey County Bar Association, and Minnesota Continuing Legal Education. He has instilled in me the value of giving back to your communities. Volunteering has allowed me to meet many people with unique backgrounds and stories to share and I have found the local impact very rewarding.

Share one meaningful moment that you have experienced over the course of your career.

I recently received a handwritten thank you card from a client. It is meaningful when someone makes the extra effort to let you know that they appreciated and found value in your guidance.

What made you want to become a lawyer?

I enjoy solving problems in diverse fields of business. In my undergraduate history and economics classes, I was intrigued by business strategy and drawing on past events to learn and predict patterns. It is interesting to use history and previous experiences as tools to assist in solving today's challenges. Working with diverse clients and industries brings new insight and never makes my practice monotonous.

What's one “big idea” for the local legal community you'd love to see take hold?

I would love to see a “Lawyer and Judges” weekend softball tournament with the proceeds going to the Hennepin County Bar Foundation. The HCBA softball league has grown from 13 teams in 2016 to 20 teams in 2019 and consists of teams comprised of law firms in both Hennepin and Ramsey Counties and the local law schools. It has been fun to meet other attorneys outside of work in a spirited and relaxing way.

— AN INTERVIEW WITH —

Chief Judge Toddrick S. Barnette



Judge Toddrick S. Barnette was elected chief judge of Hennepin County District Court in May. His term began on July 1, 2020. He is the first chief judge of color in Minnesota. Judge Barnette was appointed to the Hennepin County bench in 2006, and previously served as assistant chief judge.

This interview took place on May 29th, four days after the death of George Floyd in South Minneapolis and in the middle of the COVID-19 pandemic. It was conducted via Zoom with THL Committee Chair Ayah Helmy, Issue Editor Judge JaPaul Harris, and Managing Editor Nick Hansen. It has been edited for length and clarity.


Can you describe the role of the Chief Judge?

I would say the first order of business that I had to do was to select who are going to be the presiding judges in our divisions—who is going to be the presiding judge and the assistant presiding judge in family court, civil, criminal, juvenile. Probate/mental health is a little bit different because that is what we call one of our specialty courts.

I also have the duties to appoint the judges who are going to be the chairs of our standing committees. So we have the budget, judicial education, equal justice committee, by-laws, and facilities committee, and I have to appoint the chairs there. I can also determine what division people are in. Of course, I'll have to deal with any issues or complaints that might come up for our branch. I'll also sit on the statewide judicial council and be a representative for our district there.

Do you have the autonomy to determine what your role is going to look like versus fitting within a certain box based on what your predecessors have done?

I think where I'll probably be different than some of the other chief judges for Hennepin County is that I'll be more visible with our staff because I tend to walk around the buildings. I'll probably be more visible out doing other things in the community, beyond the "Hey, can you talk at this Rotary Club?" I think it will be important for me to be available to some of the communities that are affected by a lot of what we do in the courthouse. We see a lot folks who are disadvantaged. They have mistrust of the system. And I think it's going to be important



"I want measurable goals for us. I don't want to say oh, we want diversity, we want to increase diversity and then not know if we've done it. That's going to be important."

for me, when they invite me to come out, that I go, even if it's in a situation where they're not particularly fond of seeing judges. It's important that we be there and tell them what our roles are and what we do.

Given what you just said, and the context of where we are now, that's probably going to be more important than ever, bridging that gap between the judiciary and the public or the community. What's your vision for making that happen?

There's a couple of things that I have in mind. And there's a couple of judges that I talked to.

I want one of the judges to be heavily involved with bringing diversity to our organizations. I want to be able to increase the diversity of our staff and that's the court staff, that's the judicial staff, and the judges. And so I feel like in order to do that, we're going to have to do stuff that a lot of people don't like. And that is to really look at the data and look at where are we? In Hennepin County if you said, "Judge, have you increased the diversity of your organization? Or how has it increased over the last five years?" I would have to tell you, I don't know! Because nobody really talks about the numbers. Nobody really talks about the data.

I want measurable goals for us. I don't want to say oh, we want diversity, we want to increase diversity and then not know if we've done it. That's going to be important. I want to know that at the end of the day, if we've only increased it two percent, I want to know that we tried 150 percent. Also, a lot of times we focus on diversity for the judges and we're not focusing on enough diversity for our staff. People walk into the courthouse and they need to see people that look like them. It's so important that we hire more people. And the only way we're going to do that is if we go out into high schools, into the communities, and do that.

I have another judge who I want to be more of a liaison with all the bar associations. I want a judge that can really be focusing on, "Hey, this is what Hennepin County is doing in this area" and really focus in with the bar and tell them this is what we are doing.

And just so that the bar associations would know, you can get in touch with Judge Barnette, but you can [also] talk to this judge who is a liaison and can work with you. And that judge can be responsible and helpful in diversity and getting that message to the bar associations. Where the other judge is working to get our message out in the community.

We have our typical institutional issues that we've always had, but now we have extra layers of complexity that you are dealing with as chief judge, with the coronavirus pandemic and the George Floyd killing. You have to deal with both the PR piece of that and the logistics of how things are going to move forward. What have you been doing to address that from a logistical point of view?

The virus has affected everything that we do. The first thing we have to provide is a healthy and safe environment for our staff and for all the people that enter the courthouse. It's really contrary to having an open judicial system. Now we're saying, stop for a minute. You have to wear a mask before you come in here. We have to have social distancing from the time you walk into this building all the way to the courtroom. We have to do social distancing in the court room.

Yesterday, I was with Hennepin County workplace safety. We were in the courtroom and we had them looking at our set up for jury trial. We have to provide social distancing for the jury, and everyone in the courtroom. It's just not the way it used to be. They were in there giving us helpful suggestions and it's all based on health. It has nothing to do with the law. It's a different focus for us. Here's hand sanitizer. How many do you need? Where do you need to put them? You need to have disinfectant wipes. Things as far as the microphone. The microphone has a foam cover on it. You can't wipe the foam cover because then you'll destroy it. It's just all these different things that we do.

That's just the health part of the building. We've had to work with our justice partners, with the Sheriff's Office, the Minneapolis prosecutors, the Hennepin County prosecutors. We were in a position back when this first started in March where we had about 850 people in our jail. In three weeks, with the help of our justice partners, we reduced that to about 450-500 people. It was important that the jail had capacity to spread people out because we knew that people were going to come in. We had to understand what they were doing so they could do all the proper health screenings and have space if there was an outbreak in the jail. We had to have a system for them to know how to trace it. They work on all that stuff, but we all had to work together on this. Who's going to be contacted? For instance, the jail was really good, they thought they had someone who might have been positive. They even went back and looked at all the video where that person was and who came in contact with them. Stuff we never would have done before, or stuff we never had to do before. The virus has changed that. If we were able to reduce the jail from 850



"The virus has affected everything that we do. The first thing we have to provide is a healthy and safe environment for our staff and for all the people that enter the courthouse. It's really contrary to having an open judicial system."

people down to 450-500 people in three weeks, who really needed to be in our jails? We've done some really good things to keep some low-level offenders out of our jail, so now it's like, "How are we able to do that?" That's because we were pressured to. It's going to be interesting to see what we do after this is over and can we maintain or reduce a number of people in the jail. I think that will be important coming out of this COVID-19 pandemic.

George Floyd was part of your question. That is happening right now, and it just happened Monday, so I think part of what we're going to see after all this—I hope—is some changes in the way that people are treated when they encounter the police. I would think for most people their encounters with police officers are not negative, but in certain neighborhoods they are negative and the frequency of those encounters are just too many. Every time one of these things happen, there's always hope and I think back to '91 when Rodney King was beaten. I'll never forget when my grandmother and I were talking about it. I was up here in law school and we're talking about the video.

She goes, "We finally got them."—talking about the police on video. I was thinking about this. It was in 1991. How many times have we seen these instances of police brutality on video and nothing's happened? We have to have hope because if we don't have hope, there's just too much despair for us to think about. It's tough. It's really tough. I hope some really good things happen from this. There's already been criminal justice reform happening and initiatives. Maybe this will push some of those through faster. We'll have to see where we end up. I just hope we're not back in the same place, because we've seen this too many times.

You've talked a lot about increasing the diversity of the workforce. One of the good things about your appointment amongst a number of things is you are the first person of color to be a chief of a district court in Minnesota. When you hear that, what do you think? What goes through your mind? What do you think that means to others who aspire to be where you are?

That's a lot. I'll try to answer all those questions. I knew four years ago that I would run. I knew that's one of the reasons I wanted to be an assistant chief judge. I knew that's something that I wanted to do. But when you get elected, especially if you don't have anyone challenging you, after the vote you just feel a tremendous amount of responsibility from your colleagues that they trust you and that they support you. From being a person of color, you feel a tremendous amount of responsibility and obligation to your community. I did not know that I was the first person of color to be a chief judge at the district court level until Judge [Angela] Willms contacted me.

It's one part of being thrilled and happy and all those things, and then there's that other part of you that feels disappointed because it's 2020 and you're in Hennepin County. It's the most diverse county in the state of Minnesota. You think, how can this not happen? There are so many other judges of color that have come through Hennepin County and have deserved the honor of being chief judge.

It's kind of emotional to think about it. It's that part where you know that there's a lot of eyes on you. And there's a lot of people wanting you to succeed. I was really surprised to see some of the emails and texts that I received from people just wishing me well. I sent out an email to all the judges after I was elected and I said that I was happy and I was nervous and I got a response from about five or so judges saying, "Don't be nervous. We're going to support you." Those things are great.

The hope part makes me understand the obligation that I have. This obligation—that I don't think my white colleagues come with—is that when you're a person of color and you get to a position like this, you know that there are people who expect a lot from you. And you know that they want you to succeed. And you also know that you are going to be a role model for other people. It's that part where you go, "Please, I do not want to screw this up." I know I'm going to make mistakes. That's just human. It's just that part of you that goes, "I just want to do a good job. I really want to succeed in this." I want to be able to know that the majority of the bench knows that I am going to work hard for them and represent them very well. That the 500-plus employees know that I am going to make sure that their interests are taken to heart and that I am going to work hard for them. And then it's the community expectations, I want to make sure I rise to that occasion and that I represent them well. It can be overwhelming.

My son did this wonderful poster where he took and put down African-American men who were the first. He did it through history and then he put me at the end of it. So that was fantastic. The only thing from that that was disappointing in the poster was that he had a lot of the dad sayings on there. Things that I say quite often like, "Hey, did you get my text?" or "Hey this is a great opportunity for you!" ... There's parts that are very personal when you think of a legacy and what you are leaving and how other people view you. Having a son and a daughter just feeling like you're representing them very well, too.

Talking about legacy, picture that you're retired now and the *Hennepin Lawyer* is writing an article about the chiefship of Judge Barnette. What would you want that article to say in terms of what your legacy was during your time leading the bench?

I think what I would like to leave the bench with as a legacy would be that the judiciary in Hennepin County is better than it was when I started. This is what I mean by that. When someone walks into that courthouse, they feel more welcomed than they did before. I think some people walk in there and they walk in with distrust. We can't stop the distrust. Sometimes we're not responsible for the distrust. But if they walk into the courthouse and they go, you know what, I know when I walk in here I will be respected and I know that whether I'm a spectator or whether I'm a defendant or I'm a victim or whatever, that when I'm in that courthouse, I'm going to be respected and I'm going to be treated fairly. That would be important to me.



"I think what I would like to leave the bench with as a legacy would be that the judiciary in Hennepin County is better than it was when I started."

What are some or personal things about you that the legal community would want to know?

As embarrassing as that is, one of the things they wouldn't know is that I like playing Panda Pop, which my daughter introduced me to a year ago and now regrets. There are parts in the game where you are on a timer, and she'll ask me something, and I'll say, "I have two minutes left, it will have to wait."

One of the things lately with the pandemic that's just been great, if there is any silver lining through it all, is the amount of time

that now I've had with my family. One of the things that's happened before the pandemic, I have two teenagers, one is 17 and one is 15. My daughter, the oldest one, plays soccer. [My son] plays basketball. I can leave the house in the morning and come home and they're not here. And I won't see them till the next morning just because my daughter's practice might not get done until 10 p.m. I'm asleep, she's old enough to take care of herself when she comes into the house. I might see her the next day. But the pandemic has forced us to be together, good or bad for them. It's that family time that I felt like I used to have when I grew up.



Epiphanies & Insights on ADR for New Lawyers



A young lawyer's perspective on the rise of ADR and the preparation process

By Sheri Stewart

As a young attorney, I discovered very quickly that the scenarios I learned in law school didn't generally relate to actual day-to-day practice. Since law school places only slight emphasis on alternate dispute resolution (ADR), I encourage law firms to provide more training and real-world experience in ADR. Additionally, I hope new lawyers can learn from my personal experience and gain new insight.

I was fortunate to get this training within my first year of practice. Just a couple months after being sworn into the Minnesota State and Federal Bar, I got the opportunity to work on a case with a veteran attorney at my firm, Andrew Marshall (Andy). The case was a new matter and it quickly became my introduction to arbitration. Unbeknownst to me at the time, Andy was a fellow East Coaster, originally from New Jersey, who moved to Minnesota with his family where his renowned father, Professor Don Marshall, taught torts at the University of Minnesota Law School for 40 years.¹ Throughout this case, Andy not only gave me impromptu quizzes that highlighted my law school knowledge but also trained me on what was most likely to *actually* occur in practice.

The case we worked on was *700 Hennepin Holdings LLC v. Seven Acquisition LLC*. This article will highlight epiphanies that came to me while working on this case and that can guide newer lawyers as they practice. Some came as a result of the quizzes Andy gave me, while others were a result of preparing for arbitration and doing most of the legal work for the first time.

New lawyer epiphany #1: Sometimes in ADR, the best defense is a necessary offense.

The case began as an eviction action in Housing Court, where the landlord was attempting to evict our client, Seven Acquisition LLC, the owners and operators of the Seven Steakhouse and Sushi Restaurant, located in Downtown Minneapolis on 7th Street and Hennepin Avenue. When we

filed our temporary restraining order (TRO) in Hennepin County District Court, we started our own lawsuit and instead of being on the defensive we were on the offensive. The case became *Seven Acquisition LLC v. 700 Hennepin Holdings LLC*. This technique highlighted the litigation toolkit I so frequently heard attorneys refer to, but now I was using the tools first-hand. The judge stayed the eviction and granted our request for the TRO on the ground that Minn. Stat. § 572B.06 applied and mandated arbitration.

From that point on, I began to learn how arbitration was not only mandated in our case based on the terms of the parties' lease but also preferred in law because public policy favors using and abiding by arbitration agreements. This was an epiphany for me because there was little exposure to arbitrations in law school, possibly because arbitration decisions are not appealable and thus are not included in Minnesota reporters.

New lawyer epiphany #2: Preparing for arbitration is similar to trial preparation.

When I heard the word "arbitration," I assumed the proceeding would be less adversarial, and more seat of the pants, but we prepared the case as if we were going to trial. We hired experts, prepared multiple fact witnesses, conducted discovery, took depositions, and made sure we had extensive email communications, photographs, and videos to tell the story of our client in the most vivid, accurate, and persuasive way possible. One key difference I noticed in the ADR process was the parties' ability to weigh in on who they want as an arbitrator. In addition, unlike the trials I read about in law school, there was no record in this arbitration.

The fact that ADR is a growing trend in our profession was solidified for me when I learned that the American Bar Association Dispute Resolution Section at its Annual Spring Conference in April 2019 discussed numerous programs that emphasized how to use alternative dispute resolution effectively both in the U.S. and globally.²

When I heard the word “arbitration,” I assumed the proceeding would be less adversarial, and more seat of the pants, but we prepared the case as if we were going to trial.



¹ m.startribune.com/death-won't-silence-u-law-school-s-voice-for-justice/95378839/

² ABA meeting in Minneapolis to focus on using ADR to resolve a range of disagreements (May 20, 2020, at 2:30 p.m.)

<https://www.americanbar.org/news/abanews/aba-news-archives/2019/04/aba-meeting-in-minneapolis-to-focus-on-using-adr-to-resolve-range-of-disagreements>

New lawyer epiphany #3: Know your role and then "manage up."

I was introduced to the importance of "managing up" when I worked as a sourcing professional at NBCUniversal in New York City, and I used it in the business context before attending law school. But law school does not teach you how entrepreneurial the practice of law *actually* is. The concept of managing up in the business context is a transferable skill for a junior lawyer to use when working on a case that requires multiple tasks including, but not limited to: creating an exhibit book that goes to the court, creating a hearing notebook for your managing partner, and being the go-to researcher. In order to manage all these tasks, a checklist saves the day.

Methodically create a checklist of everything your team wants to include in the package for the court and managing attorney. This requires working with the managing attorney on the case to make sure everything that is most relevant and compelling to the case is discussed and included. Then review the checklist of items and the contents of the binder to make sure what you plan to present during the hearing is accounted for before you produce them to opposing counsel and before you get to the hearing.



New lawyer epiphany #4: Prepare, prepare some more, and then prepare for the unexpected.

Once the hearing began, I had no control over the process and how long the examination of witnesses would take. As a new lawyer, the element of surprise is not what you want when you are in a hearing. Dealing with a late witness, scheduling conflicts, or other personal obligations that occur during the hearing is challenging. I had to use my interpersonal skills to build rapport with our team of witnesses to emphasize the important role they played to accomplish the overall goal of the case. It was a fine balance between being able to manage witness expectations while simultaneously adjusting the order of appearance for each witness.

Unlike the mental preparation involved for a law school class or a law school exam, the mental preparation involved for our arbitration hearing was a marathon. Once the case was built there were some intermediary steps we took before the hearing commenced. (1) Make sure the courtroom's equipment is compatible with your technology. (2) Have both parties sign the Agreement to Arbitrate and provide it to the arbitrator. (3) Keep in mind that the traditional rules of evidence are relaxed during arbitration, but they are still enforced based on the arbitrator's discretion. At the end of the hearing the parties had to submit a draft memorandum containing proposed findings of fact, conclusions of law, and the arbitration award to the arbitrator to aid in the decision.



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New lawyer epiphany #5: Amendments and stipulations to extend deadlines are more normal than you think.

Despite the deadlines provided in the arbitration agreement, parties can stipulate to extensions that can occur in the arbitration process to accommodate their circumstances. This was one of the most surprising things I learned. In law school, the deadlines are so hard and fast that they almost seem cast in concrete unless you have some exceptional circumstances. But in practice, stipulations and amendments to deadlines are a more common practice than I had realized.

New lawyer epiphany #6: Don't be afraid to ask questions even if you think they are silly.

As I got older, I became more and more self-conscious about asking questions because I was afraid the answers were obvious. But the truth is, a lot of things in practice are NOT obvious and sometimes you really don't know what you don't know. The practice of law sometimes feels like the Wild, Wild West. Given that we are in Minnesota, it feels like the Wild, Wild Midwest, so I asked a lot of questions along the way. Much of what I learned came from the quizzes Andy gave, which forced me to dig deep and investigate in order to understand our case. Better to ask questions than to remain quiet and get it wrong! There was never a dull moment in this case. By asking questions, I learned a lot from the way Andy practices law and hope to keep learning as I develop my own style.

New lawyer epiphany #7: The ADR process will continue to be favored by the courts.

Since ADR is preferred in public policy, attorneys will continue to see an increase of arbitration clauses in agreement because the process is generally faster than the typical litigation process and more cost-effective. But, in order to effectively represent the client, the amount of preparation needed is just as intense as preparation for trial. Therefore, an emphasis on training new attorneys for these scenarios will pay dividends.

Takeaway: Winning is good and hard work pays off.

Enough said!



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Sheri Stewart is an attorney at Bassford Remele. She has experience practicing in employment law, general liability, construction defects, and has a strong interest in trusts and estates law.



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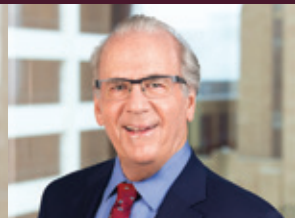
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REMOTE HEARING TECHNOLOGY

Aut inveniam viam aut faciam.

“I shall either find a way or make one.” – attrib. Hannibal.

By Referee Jason Hutchinson

Reality vs. Nostalgia

I love trying cases—it's one of my joys in life. Sadly, indulging my nostalgia for wood-paneled courtrooms, bankers' boxes full of paper, and a gallery full of spectators is not practicable or responsible at present. But people still have problems that require adjudication and, as holders of public trust, our obligation is to find a way to hear cases and controversies even in difficult times. We must either find a way or make one.

Judicial officers throughout Minnesota have taken different approaches to addressing the need for continued trial court operations during the COVID-19 pandemic. I chose to meet this need by expanding the use of remote hearing technology,¹ following a series of orders for "Continuing Operations of the Minnesota Judicial Branch" issued by the Minnesota Supreme Court. For the type of work I do, remote hearing technology strikes a good balance between safety (for staff, litigants, attorneys, witnesses, and parties), responsiveness to the parties' needs, allowing credibility determinations based on demeanor evidence, and providing a hearing that still "feels" like a hearing.

This article will focus on the importance of "the record," practical tips for using remote hearing technology, and some larger concerns about security and the right to public access. I want to be very clear: I am not suggesting that remote hearing technology is appropriate for every judicial officer and every case type—particularly in criminal cases.

What Trial Courts Do and the Importance of "The Record"

When you strip away the meetings and the non-stop emails, the trial-court life cycle of any particular case is: (i) people come to you with a problem; (ii) you hear what they have to say and make a record of what you heard; and (iii) you issue a timely order containing your decision. In some cases, you do this once. In others, you do it several times as you work through any number of pretrial issues and then a trial.

The real concern presented by remote hearing technology is this second step: hearing what people have to say and preserving "the record." People will still find a way to file their pleadings and papers, and you will still issue orders containing your decisions. But how will you provide that middle step using remote hearing technology? How will you give the parties a chance to be heard (and to feel confident that they were heard) by a judicial officer who was engaged with their case? And how do you make a record?

Our current courtroom culture has evolved to fill this need, but a review of the controlling law reveals that many of our assumptions about doing things "the right way" don't have as much grounding in the law as we may think. There is a gulf between what the *law* requires and the *practices* we have all grown accustomed to.

There are a few rules governing courtrooms (for example, Minn. Gen. R. Prac. 2.01(b) tells us there must be flags displayed or "in close proximity" to the bench when court is in session), but the key word "courtroom" is never defined. Minnesota Statutes Chapter 484 is likewise devoid of a definition of "courtroom." Our current courtroom culture has evolved organically over time and has become so ingrained that people largely conform to our expectations, without much guiding legal authority for the practice.

And courtroom culture varies significantly from county to county. Whatever remote hearing technology you adopt, it is important to think of it as an outgrowth of our current courtroom culture, and not a replacement for it. Based on my experience, the current technology works well in this role. So far, people who have had hearings seem to have felt that they were heard—which is the gold standard. I've heard people who have not participated in these hearings muse about whether they will work, but my personal experience with them indicates they *can* work. But much like running a trial in a physical courtroom, it is *work*. A well-run trial doesn't just happen by accident; it requires constant attention to myriad details and the involvement of engaged judicial officers.

What about "the record?" How can you make a sufficient record with participants all over the state (or globe)? When you review the Minnesota Constitution and Minnesota Statutes for guidance about what constitutes "the record" for the District Court, you find less than you might expect. Minnesota Statutes Section 484.72 tells us it's acceptable to use "electronic recording equipment... in lieu of a court reporter" for most hearings, but that a "competent stenographer... shall make a complete stenographic record" of a few particular types of hearings.² And nothing in this statute requires the court reporter to be in the same room as any of the parties or the judicial officer—it just requires "a complete stenographic record."

The Rules of Civil Procedure don't address the exact nature of "the record," but the Rules of Criminal Procedure provide a bit more clarity, generally requiring a "verbatim record," except where "minutes" suffice.

The most extensive guidance on "the record" is found at Minn. R. Civ. App. P. 110-116. But the practice we have grown accustomed to think of as "how we make a record" is more a creature of habit than an obligation imposed by statute, rule, or case. Sometimes we need to change our habits when they're no longer helpful.

Why are we required to make a record? In short, for appeals and accountability. In almost every contested case I've presided over, at least one side thinks the court reached the wrong decision—and they (often) have a right to appeal. Further, we are holders of public trust. Our work—and the way we do it—is subject to public scrutiny and oversight through a combination of mechanisms: public sentiment, the Board on Judicial Standards, etc. Every record of a hearing serves two distinct audiences: (i) the aggrieved parties who want an appellate judge to say the trial court erred; and (ii) the public, writ large, through various methods for ensuring judicial accountability and excellence.

If you're thinking about adopting remote hearing technology, ask yourself, "How do I preserve a record in a way that (i) allows aggrieved parties to have my decision reviewed; and (ii) keeps me accountable to the public and the institutions that watch over the judicial branch?" This simple question will help you avoid missteps as you organize and conduct your remote hearings. Keep this question in mind as external vendors try to sell you things, as internal IT people ask you to approve their solutions, and as attorneys ask you to handle things in a different way. Don't hesitate to put the question directly to the external vendor, IT person, or attorney: How does your proposal preserve a record in a way that (i) allows aggrieved parties to have my decision reviewed; and (ii) keeps me accountable to the public and the institutions that watch over the judicial branch? If they can't answer this question, they're not offering a solution. They're bringing you a problem.

The How-To Section

I have avoided software-specific tips, so these are general rubrics and principles that I have found useful. Most of these come from my own experiences, but I am indebted to Judge Christian Sande's suggestions after his pioneering work with OFP evidentiary hearings.

1 Almost all of the self-represented litigants who appear before me are comfortable with the technology. Most of them have used FaceTime, Skype, or similar technology to communicate with their families. Even folks without computers have smart phones with cameras—and they work just fine for this technology. I've had far more difficulty working with attorneys, who have varying degrees of IT support in the office and who may not have made investments in technology for a very long time.

2 Annoyance and exasperation make you look bad every time. Schedule 10-15 extra minutes for remote technology hearings. Although I've only had technical "glitches" in 5-10 percent of my remote hearings (far less often than I used to hear "I'm late because I couldn't find parking"), adding this time to your calendar allows you to work through minor issues without worrying about how you're going to start your next hearing on time. And this time isn't wasted. If you don't have any problems, you'll have 10-15 minutes to organize your thoughts and outline your order after the hearing. While my sample size is small, I've *never* had a participant appear late to a remote hearing, and I've never had to continue a hearing for "technical difficulties."

3 Start using the remote hearing technology to meet informally with your colleagues, and then start using it for "official" meetings. The more familiar we are with the technology, the less we think about the computer and the more we think about the people. There is a learning curve, but it's not very steep.

4 Remember that there are many paths to the top of the mountain. I have adopted Zoom as my remote hearing technology of choice for most purposes. My clerks send point-and-click invitations to counsel and self-represented parties, but we also include options to connect by telephone. People like options. While I'm less comfortable doing evidentiary hearings through an audio-only connection, I have no hesitation about using an audio-only link to hear oral argument in a non-evidentiary motion, or to receive an oral report from a guardian *ad litem*.

5 Create a template for Outlook (or your email program of choice) that you can send out for every hearing. Mine reminds people to:

- Be in a quiet place for your hearing. Turn off all radios and televisions in the background.
- Make sure that you have the adapter to plug in your phone or computer.
- Write down the phone numbers in your invitation. If you get disconnected or are having difficulty with the video technology, please call in on your telephone so we can work with you to address the issue.
- Click on the invitation link at least 5-10 minutes before the hearing so you can address any difficulties without missing your hearing.
- If this is an evidentiary hearing, motion hearing, or pretrial conference, this hearing will be recorded and a formal record will be created. You, however, are not allowed to record the hearing. Any recording is a violation of Minn. Gen. R. Prac. 4.01.
- Mute yourself when you're not speaking.
- Interpreters and court reporters are allowed to interrupt anyone (including the judicial officer) at any time in order to ensure a complete and accurate record.

A simple template like this has worked well for my chambers, and I was impressed with how seamlessly people were able to connect by telephone on the few occasions where there were difficulties. If it were longer, no one would read it. If it were shorter, it would omit key details.

6 Evidentiary hearings are slightly more involved.

- Offer the attorneys or self-represented litigant(s) an opportunity to do a "test run" a day or two before the hearing. Attorneys hate to look bad in front of their clients, so they usually accept the offer, and the trial will go more smoothly as a result.
- Determine how you will handle exhibits in advance, and tell the parties as early as possible. More judicial officers are requiring the parties to submit PDF copies of exhibits. Consider using "screen sharing" in your remote hearing software to share your "official" copy of the exhibits with witnesses. This prevents those situations where the judicial officer and the witness have slightly different versions of the same exhibit. We all know that this isn't supposed to happen, but we've all seen it happen. It's best to avoid it. Additionally, in Zoom (and most likely in other remote hearing technologies) it is possible to delegate the authority to do some of these things to your clerk. This will allow you to focus on making credibility determinations and findings of fact—the things you do best—during the trial.

7 Some people will say "It's about time you start using remote hearing technology. I've been appearing remotely in federal court for years!" Others will say that they "just don't trust this technology, and it feels too impersonal." I'm not here to pick a side in that debate. The reality of the current situation precludes us from conducting "business as usual," and even as stay-at-home orders are lifted, it is likely that social distancing will be required well into the future. It is probably not realistic to expect a return to packed courtrooms with several attorneys at each counsel table in the near future. I have been using remote technology to speak with stakeholder groups (like bar association sections, county attorneys, and public defenders) and key opinion leaders (like legal bloggers) in the areas where I preside. My goal is to make the use of technology more and more accepted by these folks in my district and to make the transition to using it in hearings as seamless as possible.

8 Know when *not* to use remote hearing technology. If it is not a good fit for a particular case, don't use it. Remote hearing technology is not a panacea. Certain areas of the state and certain communities do not have access to the broadband infrastructure necessary to use all of these technologies (particularly video-conferencing tools). Certain cases cannot be effectively managed from afar, for other case-specific reasons. The technology is not a replacement for good judgment.

But What About...

But what about security, transparency, the right of the public to attend hearings, and the right of the accused to a public trial?

The question of what "security" means, generally, is outside the scope of this article. But what people usually mean by "Is remote hearing technology secure?" falls into a few categories. Often, people mean "Can people I don't want to view this hearing get access to it?" I'm not as concerned about that question as the others, because almost all of my hearings are presumptively public. While I am mindful of the recording rules under Minn. Gen. R. Prac. 4.01 (and my orders address it), I don't think the possibility that someone might surreptitiously view a presumptively public hearing is a good reason not to use remote hearing technology.

The other concern is whether people can enter your remote hearing space and interrupt or hijack your hearing. As someone who has heard eviction cases during the Occupy movement, I can tell you that sort of thing *does* happen in physical courtrooms too. For the most part, the security of remote hearing technology is fairly robust but requires familiarity with the specific security settings of your software. There are plenty of online resources and trainings available on how to address security issues, and many of these security issues can be managed at a district level rather than falling on the shoulders of individual judicial officers. Most concerns about security (Zoom-bombing, for instance) can be addressed in the software settings, but ultimately—much like in a physical courtroom—you need to use your skills to manage people and know how to eject them from the hearing when that is the appropriate remedy.

There are significant concerns around maintaining public access to hearings using remote hearing technology. Most Minnesota court hearings are presumptively public. At our physical courthouses, this means that we simply leave the doors unlocked and people walk in, or out, as they see fit. But with most remote hearing technology, the court must invite people into the hearing, which adds a degree of administrative burden over simply leaving the door unlocked. If the court receives one or two requests for access, the burden is minimal. If the court receives 600 requests for access to view a high-profile case motion or trial, the burden of sending invitations would become significant, and remote hearing technology doesn't always scale well to that many users—particularly in the context of a trial.

There's a second, less-recognized concern: When you walk into an open courtroom to watch a hearing, you are not required to identify yourself or state why you're there. But if you must affirmatively contact the court and ask for a hearing invite to be emailed to you, then you are providing your contact information to the court and losing that sense of anonymity. To some extent, the presumption of open courtrooms and the ability to observe hearings anonymously promote the public's ability to maintain awareness of its courts generally and its judicial officers. I don't have a solution to this yet, but I certainly appreciate the problem.

Finally, I said at the beginning of this article that I'm not qualified to address the use of remote hearing technology in criminal cases. Most of the concerns raised in this article apply to criminal cases, with additional concerns about constitutional rights; victims' rights (see Minn.

Stat. Ch. 611A); the opportunity for friends, family, and communities to show support for defendants or victims; and an even stronger concern about public oversight of not just the judiciary, but also the executive branch agencies who are part of these proceedings. I will leave it to my colleagues who work in criminal law to address these issues.

Conclusion: This is Happening. Make Peace with It.

The COVID-19 pandemic has significantly changed how we do business, and remote hearing technology is one part of a larger solution. But remote hearing technology is happening, and we all need to make peace with it. I strongly suspect that even after the pandemic is "over," it won't go away. I hope that some of these thoughts will be useful to you, and that you will consider using remote hearing technology as you continue to serve the needs of your parties and stakeholders.

Notes

¹ I use "remote hearing technology" in this article instead of discussing particular software products. Most of us don't have a choice – we get what we get, so our preferences don't matter. It's a bit like automobiles – some people like Fords and some people like Chevys. But there are plenty of each kind on the road and they both seem to get folks to the grocery store just fine.

² Felony and gross misdemeanor offenses (except arraignments/ first appearances), jury trials, and bench trials/ evidentiary hearings.



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Handling Cases with Self-Represented Parties

By Rayeed Ibtesam

Self-represented litigants, or pro se parties that represent themselves in court without full representation by counsel, are fairly common in various areas of law, including insurance subrogation. In subrogation, insurance companies generally assign counsel to defend their insureds in lawsuits. Uninsured defendants are not provided with counsel, and are often unable to afford to pay an attorney out of pocket; forcing them to proceed pro se. Self-represented parties come with their own set of opportunities and challenges. An attorney needs to adjust her trial strategy and expectations in several ways when it comes to handling these cases. Some lessons from my experience are as follows:

First, communication and negotiation with self-represented litigants can be significantly different than that with opposing attorneys. Attorneys understand that they are bound by a code of professional conduct that fosters trust among members of the legal community. Self-represented parties are unlikely to be aware of this code, and may have a sense of mistrust in the opposing attorney's words and actions. This mistrust may hinder communication between the parties, and can be a particularly frustrating obstacle during settlement negotiations. Due to unfamiliarity with the legal process, self-represented parties may not realize when an agreement is formed, and may therefore be more prone to unknowingly breaching the terms of the agreement. Similarly, there may be times when an attorney settles a case with a self-represented party by entering into a verbal agreement. However, once the agreement is memorialized in writing, the self-represented litigant may become hesitant to "take the plunge" by signing the agreement. At that point, mistrust has so permeated the process that the only options left to the attorney may be costly to the client. Attempts to restart negotiation are unlikely to be fruitful, and filing a motion to enforce the verbal agreement invokes filing fees and comes with the risk that the judge may show leniency towards the self-represented party. Therefore, an attorney should be intentional when it comes to their communication with self-represented parties and should prepare their clients for potential setbacks.

Second, while some self-represented litigants may be suspicious of the professionalism of opposing counsel, others may inappropriately seek out their advice. Self-represented litigants are generally unversed in the practice of law, and do not understand the implications of their communication. When that happens, it is important to not give legal advice to the self-represented party. Moreover, the attorney should clarify her role in the case, which is to act in the best interests of her client.



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Third, an attorney should be prepared for a self-represented party's absence at key proceedings. Self-represented parties will have varying levels of comfort through different phases of legal proceedings based on their individual experiences. An attorney should not presume that by answering a complaint or engaging in discovery that the party has the fortitude to see the case from beginning to end. An attorney should plan for the contingency that they and their client may be the only party present at a key legal proceeding, and should be prepared to seek the appropriate remedy. Be sure to review the sanctions section in the scheduling order which may allow for the issuance of a default judgment or dismissal against a party that fails to attend a mandatory event like a pretrial conference. These remedies help attorneys avoid the added expenses of trial.

Fourth, an attorney should adjust her trial strategy based on each self-represented party and their understanding of the case. Identifying cases involving pro se parties where an attorney can save costs is a great benefit for her clients. In addition to default judgments and dismissals, there may be other cost saving strategies that could be utilized. For example, in insurance litigation if it appears that a pro se defendant is not likely to contest the plaintiff's case to a great degree at trial, then the plaintiff's attorney can consider using only the claim adjuster as her witness to testify as to damages. This strategy could save clients thousands of dollars in expert fees to get a physician or accident reconstructionist to testify. However, an attorney must be sure to be cognizant of the self-represented party's strengths as well as weaknesses. Self-represented parties should not be underestimated. It is important to remember that a self-represented litigant may be professionally sophisticated or have prior legal experience. Moreover, while an attorney might have dozens of cases, a self-represented party may have the ability to focus all his attention on this singular case in which they are personally motivated. These are important factors to consider when weighing trial strategy.

In the end, it is imperative to acknowledge that self-represented parties act differently than represented parties. An attorney dealing with self-represented parties should remember this fact in every method of communication and in each phase of legal proceedings. Furthermore, an attorney will deliver better, more cost-effective service to her client if she knows how to utilize existing remedies and adapt her trial strategy to each individual self-represented litigant.





The Use of Forensics in the Courtroom

By Christine Funk

Using forensic science in the courtroom can have a fantastic effect on jurors, when done properly. When not done properly, it can be a fantastic failure. So how is a lawyer to know the difference? It is true that, as one of my mentors often said, “Even a blind pig finds an acorn once in a while.” For example, in 1993, as a law clerk for the Dakota County Attorney’s Office, I prepared for my first trial—a juvenile speeding ticket. Someone in the office kindly “gave me the questions” for laying the foundation for the calibration of the radar gun. I dutifully read them off, word for word and in the order they appeared, and the record came in. It is no longer quite that easy. As a general rule, attempting to use forensics in a courtroom setting without adequate preparation usually results in crashing and burning in a most spectacular fashion. Proper use of forensic science begins long before the “courtroom scene.”

Forensic Science and Discovery

Proper use of forensic science, whether as a prosecutor, plaintiff, or defendant, starts with discovery. When a report is generated containing forensic science conclusions, lawyers must be aware scientists do not create these reports out of whole cloth. Rather, there is data, some submitted to the scientist, some perhaps generated by the scientist or the instrumentation at the lab; and there are interpretations of that data. Without demanding the underlying data, one cannot begin to competently question the scientist about the conclusions they have drawn.

Ask for the File

When a scientific conclusion (or a conclusion that no conclusion can be reached) comes from one of Minnesota's crime laboratories, lawyers can ask for the underlying data used to support their conclusions. This is commonly referred to as "the file." The crime laboratories in Minnesota have Standard Operating Procedures governing what steps must be documented in their files.

Similarly, when a fire inspector writes a report, there is "a file" (or there should be) documenting the work of the fire inspector. For fire investigations, the National Fire Protection Association (NFPA) 921 governs. It calls for such things as "copies of notes taken at the scene." Likewise, the National Association of Medical Examiners (NAME) have certain requirements for autopsies. When laboratories fail to comply with the requirements of their governing body, they can lose accreditation or, in the case of public health labs, their certification.

Ask for the Narrative

The "narrative," sometimes referred to as the "communications log" or the "com-log" or some other variation, documents all communications between the lab and any outside persons. For years I asked for "the communication log" and was told no such log existed. Ask the lab where they document communications with outside persons and ask for a copy of it.

It should include all communications pertaining to the case. Examples I have personally seen include a call from a U.S. Attorney telling a lab analyst they "had to" find the defendant's DNA in a rape sample, because he was a really bad guy, and they knew he had raped someone else in the neighborhood—a case they couldn't process because the victim was not documented. I have also seen a police department submit a request to "find the defendant's DNA on the gun." Who can forget the famous Duke lacrosse case, in which the now-disbarred prosecutor famously asked the lab to change the wording of a report? That information didn't come to light because of a diligent prosecutor or a concerned plaintiff's attorney. It came to light because a defense attorney with little to no training in DNA evidence asked for the file and reviewed the communication logs. Sometimes, the documentation of communications runs more mundane, such as the need to move a trial date because a witness is unavailable. Oftentimes the communications log can provide helpful information to all the attorneys involved. But they do have to look at it. Which means they have to ask for it.

Ask for Other Documents

Forensic science is fallible. Sometimes things go wrong. Sometimes things go exactly right and still a result is "wrong." Consider, for example, a DNA analyst's own DNA ending up in a crime scene sample they are testing. Is the analyst arrested and charged? Much to the relief of most forensic scientists, the answer is usually no. Sometimes, a DNA sample can get contaminated—due to careless evidence handling, or because the testing is so sensitive that even a few cells can result in a DNA profile. Most labs keep track of these incidents, often referred to as "unexpected results." There is value in keeping track of these unexpected results. It's not just analysts whose DNA can show up in test results. Janitors, law enforcement, and unidentified profiles sometimes just "show up."

You may want to ask about the maintenance of the instruments in the lab. How often, for example, are they calibrated? How often are there problems? In one drug crime lab, the data regarding the maintenance of



the instruments relied upon for drug testing reflected extremely frequent service for "white stuff" clogging the intake instrument. Draw your own conclusions.

Finally, labs that are accredited only receive such accreditation after scrutiny. And with scrutiny comes data. You can ask for the underlying data. Note: Often there is a preliminary audit and a final audit. Ask for both. You may learn something mundane, such as that no one there has CPR training. Or you may learn something appalling, such as that an analyst keeps reagents at her desk without regard to expiration dates. Or that property has a strange way of moving from one shelf to another with no accountability.

Ask for CVs for all Scientists

NFPA, for example, has a list of educational requirements for those involved in evaluating fire scenes. It can be found in NFPA 1033. Other professions have similar requirements. Vet the CVs first to assure yourself they are, indeed, qualified to perform their duties. Additionally, in this day of documented fraud cases across the country, an attorney would be remiss not to confirm the education and experience listed on the resume. In 2012, Annie Dookhan, a drug chemist, was charged with obstruction of justice, tampering with evidence, perjury, and falsification of academic records. In both her resume and in testimony, she claimed to have a master's degree in chemistry from the University of Massachusetts Boston. She didn't. This behavior covered a span of years, including before *Melendez-Diaz v. Massachusetts*,¹ wherein the Massachusetts Attorney General argued to the United States Supreme Court that there was no need to cross-examine the scientist, as the reports of forensic scientists were "not accusatory."

Ask for the Employee File

In Minnesota, subject to certain exceptions, the employee files of employees of government entities are discoverable under Minnesota Statute 13.43 subd. 2. In *Bullcoming v. New Mexico*,² a supervisor appeared to testify about the DWI blood test results generated by another scientist in the lab. Notably, in rejecting the substitution, the court opined that the defense attorney may have been interested in exploring why the scientist was on a two-week unpaid suspension from his lab duties. Was it for faking test results? Lying about credentials? Stealing drugs from the crime lab? Without the employee file, the attorney may never know.



with the observation that “Science doesn’t have an agenda.” This should be true in every case. A forensic analyst has ethical obligations, as outlined by their laboratory. Associations such as the American Academy of Forensic Sciences (AAFS), the International Association for Identification (IAI), the American Board of Criminalistics (ABC), and NAME also have codes of ethics their members are expected to adhere to.

Meeting with the analyst provides lawyers with the opportunity to ask whatever “dumb questions” they think they have. For the record, however, forensic scientists are already aware that many lawyers are “good with math” and “don’t like science.” Overall, my personal experiences meeting with analysts has been positive. In the beginning of my career, I would try to shield my purpose. But as I have developed as an attorney in recent years (and as one who embraces the theory that science doesn’t have an agenda), I have made it my practice to simply go to the lab and ask the analysts the questions I plan to ask them at trial. When they don’t answer as I think they were going to, this is a chance for extended discussion.

Meet with the Analyst

Regardless of what you think the report means, make an appointment to meet with the forensic scientist. Some attorneys believe there is an advantage to meeting with the analyst privately. Others find an advantage meeting with the attorney for the other side as well as the analyst. In one of my favorite closing arguments of all time, a friend of mine started

Consider Getting Your Own Expert

Your own expert may also be of help in deciphering the file. They may be able to point you to a relevant study or notice a particular fact that is of issue in the case. Some experts consult. Other experts testify. Understand the difference.

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If You Are Going to Use an Exhibit, Talk to the Analyst About it Ahead of Time

Do not ask an analyst about a study they haven't seen. Do not send an analyst a study and ask them to read it, then question them about it on the stand for the first time. Do not ask an analyst to perform a demonstration without talking to them about it first.

Instead, do discuss any potential exhibits you plan to use. Personally, I have introduced crime scene photos, sketches of arson fires, handwritten notes, and drawings of the particular location of a blood-like substance on a knife with great success. I have introduced sections of the unexpected-results file to demonstrate how easily DNA can transfer. (Thanks to COVID, everyone now has a far better understanding of droplets in the air.) If you want the analyst to read a study and comment on it, ask for both before they are on the stand. Take notes of your conversation and send them a note asking to confirm they said what you think they said.

Consider the Forensic Evidence in Connection with All Other Evidence

The most obvious example of this is in crime scene photos and police cameras. For example, when police come into contact with a shirtless man, wrestle him to the ground, and cuff him, his DNA is going to be on their hands or gloves. If they later find a gun in the car, they may unwittingly transfer the DNA from their hands or gloves onto the weapon. Or if the police—after arresting the defendant, rifling around in the car, locating a

weapon, and placing it on the driver's seat for pictures—then go and get their gloves, pulling them from the box without a care, and return to the car with their hands wrapped around the gloves, their DNA may transfer to the gloves, and then to the weapon they pick up and deposit in the envelope. (I have seen this more than once.) Many times, the significance of the forensic evidence can be related to how it was handled before it was sent to the lab.

Conclusion

Handling forensic science in the courtroom requires significant preparation. Start early. Review often. Don't be afraid to ask questions. And good luck.

¹ 557 U.S. 305 (2009).

² 564 U.S. 647 (2011).



Christine Funk

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Christine Funk started her career representing defendants in criminal cases in 1994. After 18 years as a criminal defense attorney in Minnesota, she jumped at the chance to become general counsel for the country's first independent crime lab. After four years in Washington, D.C., She returned to the Twin Cities to develop her criminal practice. She represents defendants facing criminal charges throughout Minnesota.



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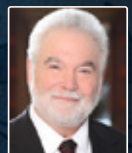
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Cameras in the Courtroom

An Outmoded Issue

By Judge Kevin Burke

You can find flash bulbs for vintage cameras on eBay, but no journalists use them. Indeed, reporters may be of an age where they do not know what flash bulbs or photo film were for. Gone, too, are the bulky television cameras that—if used in a courtroom—inherently would cause a distraction. Very few newspapers have a sketch artist on staff and none of the Minnesota papers do. Sketch artists are expensive. Digital cameras are not.

Pictures can tell us a lot. Although the courts are more receptive to allowing journalists to report with the use of pictures, Minnesota's courts have not been in the vanguard of allowing the practice. Audio recording ensures accuracy and, again, Minnesota courts have not been in the vanguard of allowing reporters to use audio recorders or to easily access recorded audio of proceedings. Even such things as allowing taking notes on a laptop or iPad are restricted by some judges. Unlike the federal court, whether to allow notetaking on a device is up to the whims of individual state court judges.

The coronavirus pandemic has changed courts significantly on a temporary basis and likely for a long time. There are Zoom pretrials, appearances on Skype, even the U. S. Supreme Court broke with tradition and conducted oral arguments by phone and broadcast simultaneously on C-SPAN.

Courts are restricting the number of people in a trial because of the imperative of maintaining social distancing and, instead, simulcasting the proceedings to nearby rooms. This way of conducting public trials is a commonsense response to one of the many challenges courts face. But there simply is no reason to limit the simulcast to those willing to sit in an adjacent room watching and wearing a mask.

Cameras in the courtroom is no longer the defining paradigm or, if it is, then the paradigm needs to promptly shift. The issue is to what extent are the courts (and the legal community) committed to transparency and enabling accurate reporting of what Minnesota courts do.

Perhaps watch what we do, not what we say, starts with a uniform rule that allows journalists to use technology to take notes. And that means they can use iPads and tape recorders just like their predecessors used quill pens.



The founders of this country, including Presidents George Washington and Thomas Jefferson, spoke of their belief that the newspapers of their time were full of lies. And yet they believed that an open and transparent judiciary was essential for this fledgling democracy to grow. The people had a right to know what went on behind the closed doors of the courthouse. The Framers of the Federal Constitution committed to open courts. Years later that same commitment was embodied in Article 1 Section 6 of the Minnesota Constitution, which explicitly provides a right to a speedy and public trial in criminal cases.

When this country was founded there were no cameras. The first photograph to include people was made by Louis Daguerre in 1838. But, before originalists say that proves this transparent-courts stuff was not envisioned by the Framers of the Constitution, there is zero historical evidence any judge conducted public trials. Instead, they told the reporters: "Please check your quill pens at the door."

Former Attorney General John Mitchell famously said, "Watch what we do, not what we say." And that is true when it comes to a commitment to public trials and journalists being allowed to use the tools of their trade to report what happens. Former Minnesota Supreme Court Chief Justice Peter Popovich created the Minnesota Court Information Officer position. He did so because of his abiding commitment that courts are public institutions and that through the media the people had a right to know what was going on. And Chief Justice Popovich was roundly

criticized for that decision. "What do we need that for?" was a refrain spoken by a lot of judges.

While virtually no one today suggests courts should not have a public information officer, Minnesota courts need to be far more media friendly than we presently are. Yes, video or audio recording can result in snippets of proceedings taken out of context, but that is as possible in print as it is on video or audio. Yes, the media may focus on more sensational proceedings that have widespread public interest, but that has historically been true and has nothing to do with quill pens of yesterday or cameras and audio recordings today. Thomas Jefferson said, if "left to me to decide whether we should have a government without newspapers or newspapers without a government, I should not hesitate a moment to prefer the latter."

One of the byproducts of the coronavirus pandemic is to put even more economic pressure on newspapers and television. Television lives for pictures, but pictures are also important for newspapers. Increasingly gone are the days when there was a beat reporter who covered only courts. This is not a metro versus Greater Minnesota issue. Everyone in Minnesota needs to better understand what Minnesota courts are doing and why. A lot of small-town newspapers are ceasing publication. Radio stations are laying off broadcasters left and right. No matter what medium they use, the journalists of today—particularly the television journalists—are generalists. Newsrooms are far sparser and as a result what they cover, what information

Minnesota citizens get is more competitive. Journalists have to have the tools to accurately tell the story of how our justice system performs and the public has a right to know that story.

What the public thinks about courts is important. Minnesota is going to make some tough budget decisions soon. Should we fund the courts, guardians ad litem, and public defenders or fix potholes? Not an easy choice. Should we fund education or give the judge a law clerk? If you are a parent of a school-age child, funding education is the easy choice. *Judge, do your own research.*

In a democracy, a strong independent judiciary is important and that can only be achieved with popular support. For a long time, the mantra has been courts need to view their volume of cases as their strength, not a weakness. If courts perform well, if litigants leave the courthouse feeling good about the process, courts build positive support for the judiciary. Trust is a precious commodity and as a result courts need to pay attention to building a reservoir of trust to withstand the tide winds that inevitably occur when an unpopular decision is issued.

Recent data from the National Center for State Courts shows little difference in perceptions of the courts between those who have had actual experience and those who have had none. Journalists do not always get it right, but if the public's insight is reduced to what it learns from television drama, our courts are in a lot of trouble.

Minnesota has been aggressive in trying by very conventional means to educate people about what the courts do. Have a Rotary Club meeting and want a speaker? A judge will likely show up. High school students might get to see the Minnesota Supreme Court hear an oral argument. And all of that is good, but, to steal a term from sales, the “market penetration” of these efforts—particularly during the coronavirus pandemic—is not sufficient to meet the challenge courts face. Trust in institutions is fractured. And while that fractured trust is not mostly directed at courts, it is dangerously close.

As courts return to the new-normal, people need to have questions answered. What is jury service like in Minnesota? Will I be safe if I respond to a jury summons? What a great story television needs to tell, and you know what? It is easier to cover a fire and help tell that story with flaming pictures in the background than it is to tell the story of changes to jury service in the new-normal Minnesota. There have been a lot of stories about what stay-at-home orders have done with domestic violence. How have the courts responded? Will I be safe if I seek an order for protection (assuming I know what

that is)? If the town newspaper is gone and the public’s information comes from *Law & Order: Special Victims Unit*, courts and the legal system are doomed.

Nothing is more irritating to a judge or lawyer than reading an article or seeing a news report that is inaccurate. Judges are careful. Most judges take copious notes, they have a court reporter who may even be doing real-time reporting, and, just to make sure, there is a tape-recorded backup. Journalists want to be accurate, too, and if judges and lawyers are frustrated by an inaccurate story, the author of that story is likely even more upset and embarrassed. If courts desire accurate reporting, there is no justification for stripping journalists of their tools to tell an accurate story, i.e., using a tablet to take notes, allowing audio recording or ready access to the backups courts keep and, yes, pictures. Perhaps watch what we do, not what we say, starts with a uniform rule that allows journalists to use technology to take notes. And that means they can use iPads and tape recorders just like their predecessors used quill pens. Watch what we do, not what we say also means not fearing pictures.

Former U.S. Supreme Court Justice Sandra Day O’Connor said, “Our nation can only be successful if all of the citizens understand how our democratic system works.” That is true not just of the nation as a whole but of the courts of this state in particular. Fostering an open, transparent, indeed, even helpful attitude toward the media is one of the steps that will foster better understanding of the legal system in this state.



**Hon.
Kevin
S. Burke**

The Hon. Kevin Burke is a district judge in Hennepin County. Judge Burke was elected for four terms as Chief Judge and three terms as Assistant Chief Judge. From 1991-1996 he served as the Chair of the Conference of Chief Judges. He chaired the State Board of Public Defense and was a leader in the effort to improve and expand the state’s public defender system.



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Video Meetings

The Right Way

By Jess Birken

Lawyers know the importance of a first impression. That's why so many of us spring for the expensive downtown offices, the giant wooden desks, and the fancy suits, right? All of those things signal something about the firm's values and status. My office is full of armchairs, twinkly lights, and pops of color. I made that choice in part to welcome clients and visitors to our office space—but also because it immediately telegraphs my personality and that my professional approach is non-traditional.

No matter what impression you're trying to give, lawyers generally care about this stuff. So, don't shoot yourself in the foot now that we're working from home. You've seen the clips online: folks snacking into their microphones, taking their Zoom call to the bathroom, etc. It's distracting at best and unprofessional at worst. Now, you might not be the lawyer that infamously went to an online court hearing from bed, but, be honest, do you need to upgrade your virtual first impression?

Read on for a simple how-to etiquette guide to professionalize your video conferencing, no matter what platform you use.

The Environment

This is intuitive, but it bears repeating: you *cannot* have a good video call without being in the right environment. Thankfully, it's not difficult to set things up for a good call. Here's what you need to consider:

Background: Set up your camera shot. Even if you're working from your bedroom, we should not see the bed – no matter how pretty your pillow shams are. Turn your desk if you have to. You don't need to have a fancy home-office or the stereotypical lawyer bookshelves in the background, but something static and unobtrusive is ideal. Sitting in front of a mostly blank wall will do the trick.

This is intuitive, but it bears repeating: you cannot have a good video call without being in the right environment.

Lighting: You want enough light to illuminate your face, but not so much that it washes out your features or creates glare on your eyeglasses. Just like in a photo, we want to see you—not just a shadowy silhouette. Don't have an uncovered window behind you which makes you a dark blob. It sounds obvious, but make sure you have light facing your face! A lamp will usually do the trick, but you could also look into a special light called a “light ring” which you can get for around \$20 on Amazon. No matter what you use, take a moment before each meeting to turn on your lamp, draw the curtains, whatever you need to do to get the right lighting.

Activity: People walking in and out of the shot and background noise are major distractions for your meeting. If you have a quiet corner of your home to do meetings from, use that instead of sitting at your kitchen table where your kid is noisily eating cereal. If there's an open door behind you, close it so we don't see your family members walking through the hallway.

The Tools

Next up, do you have the tools to hold a solid video conference? The built-in webcam and mic on your laptop are usually not enough—sorry. If you're going to be in a meeting most days, I encourage you to upgrade. Likewise, make sure you have high speed internet, and check that you're getting what you pay for by running a test at www.speedtest.net.

Camera: Whether your computer has a built-in camera or not, consider buying an external webcam. There are many affordable high-resolution options out there—look for full HD 1080p cameras. I have the Logitech C920, and it's been great. A decent camera paired with some good lighting will have you looking sharp.

Headset: Lawyers are wordsmiths, so make sure your clients and colleagues can focus on what you say. Buy a higher quality headset and ditch the ear buds with an inline mic. A decent headset will help filter out background noise, so you don't have to worry about your dog's loud chewing or a partner's work call bleeding over into yours. I use the Sennheiser Presence Bluetooth headset, and it's worth every penny!

The Features

No matter which video conference program you're using, it will likely have some features that can make your video meeting go smoothly. Here's a few to keep in mind:

Mute: If you only take one thing out of this article, let it be this: *in a group meeting, mute yourself whenever you aren't talking*. If you're hosting the meeting, you can automatically mute all participants from the start of the meeting (and re-mute them as needed). This simple feature will take so much of the chaos out of your video meetings. Use it!

Chat: Pretty much all video conferencing platforms have a chat feature—and it's more useful than you might think. In a larger meeting, the chat function can be a great place to manage who is speaking and allow people to raise questions or concerns without interrupting the meeting.

Screen Share: When we can't all be in the same room to look at the same thing, screen sharing is here to help. You can share a formal presentation to a big group or use it to work together on reviewing changes to a document. Microsoft Teams is free with your 365 subscription. I also use Zoom. Be sure to select what you share—choose the active program—not your full screen. This helps the viewer see better and protects against sharing confidential information accidentally.

Virtual Background: A bonus one for Zoom users—Can't get that perfect background shot you crave? Add a photo as your virtual background. Find a photo of the fancy office of your dreams and go for it!

Upgrading the Whole WFH Experience

As you can see, the little things add up and create a more professional online you. The good news is, it's very easy to try these little fixes.

One last note: it's okay to make mistakes. Most video etiquette faux pas happen because people don't understand the tools or because they haven't quite adjusted to their home-office as a professional environment. And hey, no matter how prepared you are, sometimes your five-year-old is going burst in when you least expect it—it's OK. You're creating a more human connection with clients and colleagues by using these video conference tools like a pro—and that's a good thing.

Looking for more work from home tips? I put together an entire guide for you to download at birkenlaw.com/wfh



Jess Birken

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

Managing All the Pieces

By Eric T. Cooperstein



Thanks to COVID-19, nearly every lawyer has had a taste of working “remotely,” i.e. physically severed from the credenzas, file cabinets, and rolling stacks of shelves that house their paper files. Suddenly, the “file” is everywhere: electronic documents that used to reside only on an office computer or server now may have been saved on a home laptop; letters to opposing counsel are mixed in with emails; and the few critical paper documents that have been scanned by your skeleton office staff and sent to you by email seem to have since disappeared from your computer. Welcome to the deep end of the pool.

Not only are you having trouble keeping track of where all the pieces of your file are but, someday, a client is going to ask you for a complete copy

of their file, which you are required to provide to them under Rules 1.15(c)(4) and 1.16(d) and (e), Minnesota Rules of Professional Conduct (MRPC). Failing to provide the client with a copy of their file is a very common basis for an ethics complaint. So, this seems like a good time to talk about how to manage an electronic client file, before a second or third wave of COVID-19 sends us all back home again.

File Naming: Electronic files need to be organized just like paper files. In an electronic file, every document gets a name, not unlike the “pleadings index” one might find in a litigator’s file. One of my biggest pet peeves is when a lawyer emails me a document titled “Scan0001,” the default name put on the document by the scanner. Not only is it impossible for me to figure out what the document is without opening it

but the person who sent it to me also cannot tell. A folder of documents titled “Scan0001,” “Scan0002,” and “Jones letter” is like a large random pile of documents sitting on the edge of a desk.

Unless you are using sophisticated document-management software, every file name should start with a client identifier, such as a file number, last name, etc. That way, when a document inevitably ends up in the wrong folder, you can still search your computer for all documents with that client identifier.

Next, I like to identify the type of document: ORD (order), PLD (pleading), LTR (letter), and so on. That way, documents of a similar type are grouped together when I look at the folder contents.

All documents should be dated, with the year first, e.g. 2020.0801. Use the whole year, not just the last two digits, at least until 2032. Avoid inserting the month first (e.g. 0801.2020), which will group all the July documents together over multiple years, making it more difficult to find what you are looking for. Similarly, if you write out the month (August 01.2020), then August documents will appear before January documents.

Putting it all together, a letter for client Smith might be named “123.SM.LTR.2020.0801.FINAL.to E. Kagan re counteroffer.pdf.” Even if you later cannot recall what exactly you named the document, searching for “SM.LTR.2020” should reveal all the letters you wrote this year for that client. Of course, you can come up with your own naming system but it should have these elements.

Drafts and Finals: In an ethics investigation focused on whether the lawyer communicated with the client, it is not very convincing for a lawyer to produce a copy of a Word document, unsigned, no letterhead, with the date field updated to the date the lawyer most recently printed the document. Think of all Word documents as drafts. Final documents, such as pleadings, letters, contracts, etc., have signatures on them and should be preserved as PDFs.¹

Preserving emails: Two guidelines about preserving emails. First, always save attachments to a document folder, renaming them as above or using your own system. Hunting through old emails for a poorly labeled attachment is mind numbing. Second, move client emails from your inbox to a dedicated client folder. At the end of the representation, save them all as either one large text file or as PDFs. If you are not sure how, Google it.

File notes: Except for a few narrow situations, your handwritten or typewritten notes of your conversations with clients, opposing counsel, witnesses, etc., are part of the client file. See Rule 1.16(e). Yes, your notes may be privileged or work product but nearly always the client owns that privilege or work product. Preserve the notes at the end of the representation by either scanning them (if handwritten) or saving them to a text file or PDF if typewritten.

Invoices: It may seem obvious that invoices are part of the client's file but often the invoices are maintained through software that is distinct from the lawyer's document folder system. Routinely preserve PDFs of invoices and save them to the client's folder.

The good news is that providing a client with an electronic version of their file is much faster and easier than spending half a day in front of a copy machine pulling out staples and clearing copier jams. Another bonus is that attorneys do not have an obligation to maintain paper copies of client files, except for original documents, as long as the client will not in any way be prejudiced by the lack of a paper file.²

By the time the next wave comes, you are going to wonder why you bothered with all those paper files for so long.

¹This concept attributed to Sam Glover.

² See Virginia Legal Ethics Opinion 1818 (Sept. 30, 2005).



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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In honor of the HCBA's 100th anniversary, we encouraged members to participate in the HCBA Centennial Pro Bono Challenge during the 2019-2020 bar year.

To complete the challenge, let the HCBA office know that you provided 100 hours of pro bono legal services between July 1, 2019 and June 30, 2020, to low-income individuals at no fee and without expectation of a fee.

DEADLINE TO REPORT COMPLETION: JULY 20, 2020

If you completed this challenge, please contact Dana Miner, Director of Legal Services at dminer@mnbars.org

Members who self-report to the HCBA that they have completed the challenge will be recognized in bar communications and receive a special recognition item.

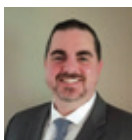
Member News

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

Henson Efron is pleased to announce **Jaime Driggs** was selected last month to be an American Academy of Matrimonial Lawyers Fellow.



The law firm of Meagher + Geer announces that **Aaron Simon** has joined the firm.



Cozen O'Connor announces the addition of attorney **Katheryn A. Gettman** to the firm.

Thomas Hainje has joined Messerli Kramer.

Best & Flanagan announces that **Kim Ruckdaschel-Haley** has joined the firm as a partner.



Nilan Johnson Lewis (NJL) announces it has expanded its labor and employment law offerings by adding the members of the corporate immigration law firm Myers Thompson Medeiros. Joining the firm's labor and employment practice group are attorneys **John Medeiros, Sam Myers, Elizabeth Thompson, Jesse Goldfarb, Mike Sevilla, and Rebecca Desnoyers.**

Halunen Law has hired **Brian Stofferahn** to lead their new personal injury practice.



Greenstein Sellers is pleased to announce **Justice Ericson Lindell** as its newest partner and co-chair of the litigation department.



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Grantee Spotlight:



CHILDREN'S LAW CENTER OF MINNESOTA

Children's Law Center of Minnesota (CLC) was founded in 1995 with the mission to promote the legal rights and well-being of children and youth. CLC's staff and volunteers provide direct representation of children and youth, primarily in the child welfare system, and advocate for changes in the systems that affect their lives.

CLC serves Minnesota's at-risk and foster care youth through direct legal representation, systemic advocacy, education, and outreach efforts. CLC's legal staff, working in tandem with our team of over 340 active volunteer attorneys, represent youth in court. CLC's representation model ensures that our clients' legal rights are upheld, their preferences are heard and that they receive appropriate placements and resources to address their trauma and future goals in order to help them move forward into their very best lives possible.

Volunteer and staff attorneys provide the legal counsel to ensure Minnesota's most vulnerable children have a voice in the decisions affecting their lives. In 2019, CLC served approximately 900 children who had been removed from abusive or neglectful homes. This is a 150 percent client increase from 2010 and despite the challenges of COVID-19, CLC's clients continue to have hearings and need advocacy.

CLC utilizes a multidisciplinary holistic approach to its representation. CLC attorneys and staff social workers listen to CLC's young clients to help them navigate the complicated systems impacting their daily lives. CLC works together with its clients to understand their needs and commits to representing these youth for the life of their cases.

In Hennepin County, CLC is assigned to youth aged 10 and older when the child has become a ward of the state. Youth have a right to counsel, but often they—and even other adults in their lives—do not know they have this right. For many of CLC's clients, their attorney is the

most stable and consistent adult in their lives. In addition to training, CLC staff attorneys and social workers provide ongoing support to its volunteer attorneys. When CLC matches a volunteer attorney with a specific CLC child client, it also pairs the volunteer with both a CLC staff attorney and a CLC staff social worker. CLC seeks to accommodate the strengths of its volunteer attorneys when matching them to a CLC client.

CLC is appointed to approximately 350 cases in Hennepin County each year. CLC's clients are primarily youth of color (84%) and most are represented in sibling groups (53%). In 2019, almost half of CLC's closed Hennepin County cases were closed due to an adoption. It is the intentional work of CLC staff and volunteer attorneys that ensures youth impacted by abuse, neglect and trauma find their desired stable and safe homes.

By providing legal representation to youth, children are more likely to be heard when they voice their needs and desires, such as staying together with a sibling, securing transportation to their school of origin, visits with family members and implementing an independent living plan. Advocating for youth in the courtroom increases the likelihood of graduating from high school, pursuing post-secondary education, finding a job and staying out of the juvenile justice system. Having an attorney also helps children feel empowered and part of their own destiny.

When asked why she has dedicated her career to representing youth in foster care, CLC's managing attorney, Anne Tyler Gueinzus, stated "I am proud of the work CLC does and I am honored to work with such committed and talented colleagues. Our clients never fail to impress me with their courage and strength in the face of unimaginable adversity."

CLC noted that financial support is always welcome and greatly appreciated. During the pandemic, CLC's operating costs have increased

due to the organization's remote participation needs. "Anything that helps us do our work during this time is incredible," Executive Director, Lilia Panteleeva, stated.

To get involved or for more information about CLC's work, please contact Anne Tyler Gueinzus, Managing Attorney, at anneg@clcmn.org or 651-644-4438. To make a donation online, please go to www.clcmn.org/get-involved/donate.



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10 QUESTIONS

with
**Aalok
Sharma**

Attorney, Stinson

1 What is your elevator speech?

The esports, legal sports wagering, and sports tech industry is full of innovators who push boundaries where there are few laws and regulations to guide them. I partner with these innovators to provide legal guidance to help them mitigate risk.

2 What is the most rewarding part of your job?

I have the privilege to partner and work with a forward-thinking industry that is based on innovation and creativity, and a dedication to sports. I'm passionate about their businesses, so my work just doesn't feel like work.

3 As a sports lawyer and fan, how are you coping with the cancellations of sporting events due to COVID?

Like so many, my weekends typically revolved around big games. It's tough not to have sports in my daily world. I know these brands and institutions will survive this hiatus. The upside to this disruption is leagues, teams, and athletes are learning to adapt to provide their fans with content.

4 You were selected to the Leadership Council on Legal Diversity (LCLD) Pathfinder program. What does that involve and how has it impacted your career so far?

In law school, I noticed that many firms in town struggled with diversity in their ranks. I'm grateful Stinson values diversity and that I will be one of their LCLD Pathfinder participants this year. As an attorney of color, there can be barriers to success. LCLD teaches us skills to deconstruct those hurdles and provides us with a unique opportunity to connect with other diverse attorneys to learn together and support one another.

5 You worked as a CPA. Has your accounting background been useful in your legal practice?

Sports law is intriguing to many, and the reality is that front offices are businesses with obligations to create new revenue streams and to increase enterprise value. My training as an attorney and former CPA enables me to support my clients' bottom line. I'm able to provide substantive legal and financial guidance at the same time.

My clients value this insight when making their business decisions.

6 You were a long distance runner for your college track team. How did your experience as a Division I athlete influence your career choice?

To fans, it looks like track athletes are competing against each other. In reality, we are competing against time. Time is a neutral arbiter and it does not care about your race, age, ethnicity, sexual orientation, or gender. To achieve your best time, you must be willing to put in the hard work, day after day. I use this mindset in life and approach the practice of law in the same manner.

7 What is the most valuable thing you learned from participating in sports?

I learned that success often equated to the right mixture of hard work and talent.

8 When you aren't working, how do you like to spend your free time?

I still really love to run. My favorite place to run in the Twin Cities is around the lakes, but I do enjoy my road bike more and more these days. My favorite bike path takes me over the Smith Avenue bridge in St. Paul over into Lilydale.

9 What book is currently on your nightstand?

Moneyball by Michael Lewis. It's a great example of innovation and using sports data for the first time to improve player performance. Major League Baseball helped revolutionize sports, and their approach remains a great example of creative, data-driven thinking.

10 Where do you see yourself 10 years from now?

The future of sports was already changing, and it is going to accelerate with the ongoing pandemic. The regulatory and legal world is not equipped to handle this change, and sports businesses are going to need counsel that is adept, flexible, and creative. I plan on using my skills and passion to help them become successful.



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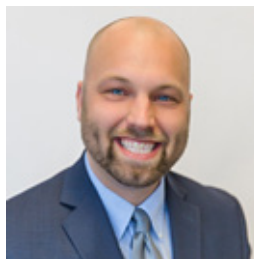
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