

July / August 2016 Volume 85 Issue 4

# HENNEPIN LAWYER

Official Publication of the Hennepin County Bar Association



**FOCUS ON  
CRIMINAL  
LAW AND  
JUSTICE**

*ON THE COVER*  
**Professionalism  
Award  
Honorees**  
Judge Peter A. Cahill  
Susan M. Holden



## Count the Ways Your District Bar Works for You.

# 80 FREE CLES

During the 2016-2017 bar year, you can attend 80 hours of CLE seminars at the association office at *no charge*. Non-members pay \$40 or more for each 1.0 CLE session. Attend just 6 seminars during the year, and HCBA membership saves you \$240! Members also receive discounts on HCBA webcasts and OnDemand CLE.

These active groups provide: leadership opportunities and development, skills training, a forum to exchange ideas, mentoring, and more. Improve your practice and help shape the legal profession—one meeting at a time. Plus, there is no extra fee to join HCBA sections.

# 30 COMMITTEES & SECTIONS

# 40 SOCIAL EVENTS

HCBA socials, happy hours, and club meet-ups help you create connections and catch up with colleagues. Expand your professional circle and referral network the best way: in person.

# 6 ISSUES OF THE 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.



Numbers represent 2015-16 offerings. Similar programming is planned for 2016-17.

Serving Local Attorneys, Representing the Profession, and Working to Ensure the Fairness and Accessibility of the Legal System Since 1919.

Make the Most of Your Membership at [www.hcba.org](http://www.hcba.org)

Your Membership Makes It Happen.



Serving as the charitable arm of the HCBA, the Hennepin County Bar Foundation promotes equal 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.

## Lawyer Referral

and Information Service

For over 60 years, HCBA's Lawyer Referral program has been serving the profession and the public by helping individuals connect with and hire attorneys. Lawyer Referral is the best place to direct callers and clients with legal matters outside your practice area.

In addition to helping 10,000+ callers each year, HCBA's Lawyer Referral service coordinates with 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.



Volunteer Lawyers Network, which celebrates its 50<sup>th</sup> anniversary this year, is the pro bono arm of the HCBA and provides civil legal services to low-income people in our community.

In its commitment to equal access to justice, the HCBA provides a variety of services for the public through its own programs and by significant financial 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

- 80 FREE 1.0 credit CLE programs are planned for the 2016-17 year. Plus, additional training sessions and webcasts, with discounted registrations for members.
- Member clubs let you connect to attorneys with shared interests (such as biking and photography).
- Plug in to mentoring programs and great networking opportunities for every stage of your career.
- 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.
- Gain management and leadership experience through committee work and projects, including diversity initiatives, programs supporting professionalism, and increased access to justice.
- Legal education and outreach programs, such as our speakers bureau, support the Hennepin County community and provide you with ways to give back.
- Events and socials connect you with attorneys (from within and outside your areas of practice), members of the bench, and others in community. Expand your contacts and referral networks.
- 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.
- Members interact with the Fourth District Court Bench through events, training, and advocacy efforts.
- The HCBA website provides even more opportunities for you to build connections and maximize your membership. Create your own networking groups, start a blog, update your profile page, and more.

HENNEPIN COUNTY BAR ASSOCIATION • 612-752-6600 •  
600 Nicollet Mall #390, Minneapolis, MN 55402 • [www.hcba.org](http://www.hcba.org)

# HENNEPIN LAWYER

Official Publication of the Hennepin County Bar Association



**Hennepin Lawyer**  
**July/August 2016**  
**Volume 85, Number 4**  
[www.hcba.org](http://www.hcba.org)

#### HENNEPIN LAWYER

Eric Cooperstein	Committee Chair
Duane D. Stanley	Executive Editor
Joseph Satter	Editor & Creative Director
Nick Hansen	Managing Editor
Anousack Sithiphanh	Design & Layout
Judge William H. Koch	Issue Editor

#### COMMITTEE MEMBERS

Susan L. Anderson	Judge William H. Koch
Scholastica Baker	Beth Luoma
Eric Cooperstein	Jessica Maher
Sandra Feist	Dan McCabe
Stephen C. Fiebigger	Sara J. Payne
Aaron Frederickson	Azure Schermerhorn Snyder
Carol Johnson	M. Gregory Simpson
Karl Johnson	Rebecca Vandenberg
	Tom Wheeler

*The Hennepin Lawyer is published by the Hennepin County Bar Association to educate and inform lawyers about the current issues and events relating to the law and the profession. It allows for the free expression and exchange of ideas. Articles do not necessarily represent the opinions of any person other than their writers. Copies of the editorial policy statement are available upon request or online at [www.hcba.org](http://www.hcba.org).*

© 2016 Hennepin County Bar Association

#### HENNEPIN COUNTY BAR ASSOCIATION

Paul Floyd	President
Thaddeus Lightfoot	President-Elect
Adine Momoh	Treasurer
Jeffrey Baill	Secretary
Kim Lowe	Past President
Stuart Nostdahl	New Lawyers Chair

Hennepin County Bar Association  
600 Nicollet Mall, #390  
Minneapolis, MN 55402-1043  
Phone 612-752-6600 [www.hcba.org](http://www.hcba.org)

For advertising contact: Sheila Johnson  
[sheila@hcba.org](mailto:sheila@hcba.org) 612-752-6615

## CRIMINAL LAW AND JUSTICE:

- 08 **Your "Permanent Record" Under Minnesota's Expungement Laws: The Process and Opportunities for Change** *by Samuel M. Johnson*
- 12 **Which Is Worse, Bankruptcy Court or Criminal Court: How About Both?** *by Colin Kreuziger*
- 18 **Civilian Oversight of Law Enforcement: A Retrospective & Look Forward** *by Judge Michael K. Browne*
- 22 **Mental Health and Criminal Justice** *by Leah Kaiser and Judge William H. Koch*
- 26 **"Say What?" Interpreter Services at Hennepin County Courts** *by Erica E. Davis and Nicole A. Kettwick*
- 30 **Eyes and Ears of the Community: A New ACLU App Allows Real-Time Reporting** *by Jana Kooren*
- 32 **Local Collaboration Shapes National Policy: Mellouli v. Lynch** *by Anna K. B. Finstrom*
- 38 **Reviews: Hennepin Perspectives** *by Megan Bowman and Gloria Stamps-Smith*

## IN THIS ISSUE:

- 02 **Inside View: A Good Time To Learn Something New** *by Judge William H. Koch*
- 03 **From Your President: An Eye for an I** *by Kimberly Lowe*
- 04 **On the Cover: Professionalism Award Honorees**
- 07 **Bar Foundation Posts Another Record Year**
- 16 **Ask-A-Lawyer** *asked by Robert C. Whipps*
- 25 **Discovery: Meet Kathy Moccio** *by Deborah Gallenberg*
- 36 **Practice Pointers: Protecting Veterans in the Workplace** *by Matthew Frank*
- 40 **Classifieds**
- 41 **Member News**
- 42 **Great Bites, in Brief** *by Lizzu Castañeda*
- 44 **Lens View**

FSC logo

# A Good Time to Learn Something New

I have been a lawyer for 28 years, and a judge for eight years. Almost 18 of those years have been directly involved with felony criminal matters. Yet, I learn something new every day. By coordinating this issue of the *Hennepin Lawyer*, I wanted to highlight several important areas of criminal law. The issues are real. The impact is real. The contributions of some unsung heroes is worthy of praise. I hope you will learn something new about criminal law in Hennepin County; I think you will see you have reason to feel good about much of what is being done locally.

Of course, there are other, ongoing issues in the criminal justice arena that continue to call for our collective attention. As I am writing this column and this issue is being readied for print, there was another of the ongoing Friday protests at the Hennepin County Government Center about the Jamar Clark shooting, the results of the federal investigation into that shooting were announced, three Somali young men were convicted in federal court on charges related to their efforts to travel abroad and join the terror group ISIS, and the Hennepin County Board voted to spend \$4 million to upgrade a south Minneapolis detox unit and add a 16-bed mental health crisis center.

Against this backdrop, I attended a community event sponsored by the Film Society of Minneapolis and St. Paul at The Capri Theater in North Minneapolis. The event was a screening of the documentary, *3½ Minutes, Ten Bullets* chronicling the tragic shooting death of teenager Jordan Davis by Michael Dunn at a Florida gas station in the early evening hours the day after Thanksgiving in 2012. The movie captured much of the tension and snippets of the trials. But, more importantly, it provided an insight into two lives that had a chance, and deadly, intersection that evening. The "stand your ground" law in Florida featured prominently, as did the power of perceptions and stereotypes. Watching it with North Minneapolis community members (as well as a Ramsey County judge, a Hennepin County law clerk, and a Ramsey County Public Defender) was meaningful. It was quite different from watching it at home. It was more powerful to hear and see the quiet expressions of grief, understanding, and despair of those watching in the movie theater. The group discussion after the show made it clear that there are different views, even among individuals that people might initially think would be in agreement.

I hope you find this issue informative, and challenging. I hope you find something within these pages that motivates you to dig deeper. And to get involved—either through the HCBA or on your own by going to community events aimed at building bridges.

Upcoming events by the HCBA include a couple of firsts. On July 20, a smattering of HCBA committees, Fourth District Court committees, and other community groups is sponsoring a bench and bar discussion of *Between the World and Me*. (You can sign up today at [hcba.org](http://hcba.org).) In addition to reading a compelling book, you will hear a variety of perspectives from our panel. And, later, on a date still to be determined, the HCBA and several community groups anticipate sponsoring a unique CLE/community outreach program dealing with issues of race and community justice.

As one of my favorite sayings goes, "When the facts change, I change my mind. What do you do?" It is time for all of us to get more facts by becoming more engaged. Reading this magazine is one way to get started. But, please, don't let it end there.



**Cover photo and Lens View photos:**  
Sarah Mayer

*Other photos were submitted,  
taken by HCBA staff, or purchased.*

**You can be a part of the  
Hennepin Lawyer Committee.**

*If you are interested in writing or editing, email  
Nick Hansen, Managing Editor at [nick@hcba.org](mailto:nick@hcba.org)*



## Judge William H. Koch

*[William.Koch@courts.state.mn.us](mailto:William.Koch@courts.state.mn.us)*

Ever since his grandfather told him as a young boy that he would "rather have someone work with him who made a mistake" (and learned from it), Judge Koch has been interested in criminal justice. This issue allows him to highlight a few reasons why this is such an important area of the law.

# An Eye for an I

As a teenager growing up in Michigan, I worked at a family-owned restaurant/ice cream parlor/store. I wore a brown polyester uniform that was (or maybe it wasn't) flame retardant. When my mom picked me up after my shifts, our beloved pooch Muffin would joyfully lick the ice cream and fried chicken grease from my smock as we rode shotgun together in the front seat of the minivan. Grandpa McGuire, the patriarch of the business, "took a shine" to me since my hyperactivity tended to translate into obsessive cleaning during slow times. He would pat my shoulder and say, "If you have time to lean, you have time to clean. Remember that, my girl, and you will go far." This quintessential mid-eighties suburban job experience prepared me well to become a successful lawyer. It also set the pattern for a 25-year ego-driven professional odyssey that has left me with a permanent medical condition that will require expensive and extensive monitoring and treatment for the rest of my life.

My story is simple and complicated at the same time. Like just about all lawyers, I went to school, did well, went to more school, did well, got a job because I did well in school and then started my career in large firm private practice. Obviously, not much has changed. Unproductive time ("leaning" in Grandpa McGuire's terms) has always made me nervous. It goes without saying that the work-reward system of large firm private practice fit perfectly with my workaholicism. Like Muffin licking up ice cream and chicken residue, I joyfully billed my hours and garnered the rewards that came with being a big biller. Unfortunately, when it came to my own health and wellness, I was still riding shotgun in a minivan that was now being driven by an image of success, instead of my mom.

In September of 2009, after completing my 11th year of billing well over 2,000 hours a year I woke up on a crisp fall morning with shingles in my eye. Even after being diagnosed, put on herpes medicine and told that having Shingles in your eye is about the worst possible situation (Google and you will find out), I continued to bill hours. I couldn't go to the office to work, so I just stayed at home and continued to bill hours. What else could I do? I was not equipped mentally and emotionally do anything else but bill hours. I was told repeatedly to take time off to let my eye heal. In the spring of 2010, after five months of ignoring doctors' orders to take time off to heal, I woke up with mold on my eye. It was gross. I was transferred to the University of Minnesota's world-class eye clinic. The doctors said they had only seen shingles and an eye infection like I had in late-stage HIV/AIDS patients or other individuals with severely compromised immune systems. The doctors were unable to stop the spread of the infection, so they had to cut it out of my eye and graft on a donor cornea. In between one of the six different surgeries on my eye (including a second cornea transplant), the University of Minnesota sent me to the Mayo Clinic to determine how an apparently

healthy woman became afflicted with illnesses and infections historically limited to the most ill.

The Mayo Clinic's final conclusion was that my immune system took a temporary break (or two) as a result of extreme, chronic, and repeated stress. Yep, you guessed it. My neglect of myself in exchange for building my professional career (my "I"), built on piles of billable hours and the chronic stress that accompanies those hours, resulted in the loss of my "eye."

Last month the Mayo Clinic performed a seventh surgical procedure on my bad eye, which has been "salvaged" enough to be correctable if anything ever happens to my good eye. In August, I am scheduled to have surgery on my good eye. My mom is coming from Arizona to drive me around for the week that I will not be able to see. So as I recall those days with Muffin, my brown polyester uniform, and Grandpa McGuire, I force myself to lean more and clean less and accept that I am "successful" regardless of the number of hours I bill. And I am happy and thankful I have a crossover and not a minivan.



2015-16 HCBA President

**Kimberly Lowe**

*klowe@jux.law*

Ms. Lowe is a senior business lawyer at JUX Law Firm where she provides legal services to nonprofit organizations and social entrepreneurs, as well as startup and operating small to mid-size companies. Ms. Lowe has a blog—Portia's Desk—where she and her team of bloggers combine legal insights about nonprofit tax-exempt organizations and benefit corporations with leadership and a love of literature.

# Professionalism Award Honorees





Each year, the HCBA recognizes individuals for their commitment to the highest of professional standards in the legal community. These professionalism awards are granted in the belief that professionalism serves the best interests of clients, fosters respect and trust between lawyers and the public, promotes the efficient resolution of disputes, and improves the administration of justice. **Susan Holden** (SiebenCarey) and **Judge Peter Cahill** (4th District Court) were recognized at the HCBA annual meeting on June 1 with the Professionalism Awards for 2016.

## Susan M. Holden

By *Trudy Halla*

I have known and admired Sue Holden since I began volunteering with her in the Hennepin County Bar Association in the early 1990s. She is outgoing, friendly, helpful, thoughtful, amazingly competent, and willing to serve.

Amongst many, two occasions stand out to highlight Sue's spirit of public service. The first arose during her presidency of the MSBA when Hurricane Katrina hit the Gulf Coast. Susan promptly created a task force charged with bringing money, supplies, furniture, volunteer lawyers, and anything else a law firm or legal advice clinic could need, to Louisiana, Mississippi, and Alabama. In the process, Susan approached and persuaded many law firms in the Twin Cities and throughout Minnesota to contribute. But she did not only visit lawyers in her home area. She actually went and met with state bar officials and other leaders in the affected states to ensure delivery of our help and learn what else members of the bar could do to help those in need down south. She created lifelong friendships in the process.

The second occasion began in 2008 when Sue was appointed by the Minnesota Supreme Court Chief Justice to chair the special master panel in the specially created compensation process for survivors of the I-35W bridge collapse. She chaired the three-person panel, whose major purpose was dividing up the \$36.6 million allocated by the Minnesota legislature among the 179 victims, essentially putting a dollar figure on the harm those people experienced in the bridge collapse. This mission required the panel to take testimony and apply the law; in essence they were both judge and jury. The panel did an excellent job.

Sue is one of the finest trial lawyers in Minnesota. She has been a civil trial specialist for more than 20 years, consistently appears on lists of the best lawyers in Minnesota, has long been AV rated by Martindale Hubbell, is a member of the American Board of Trial Advocates, as well as a fellow of the International Society of Barristers. Few lawyers in Minnesota can rival Sue's public service credentials. She is a former president of the HCBA and the MSBA and has served in the ABA House of Delegates for nearly 10 years. She won the MSBA's highest award—the President's Award—in 2008 for outstanding service to the organization.

Steve Kirsch, who worked with her on the special master panel, and before that on many mediations, says that he cannot think of a more professional, civil and ethical lawyer, not only with her own clients, but with all those involved in a dispute. Sue treats plaintiffs' attorneys, defense attorneys, and state officials all with the same poise and confidence. She is very dependable. She has worked in intense and difficult situations and has never lost her cool. She is the consummate advocate for matters concerning the legal community and providing legal services to the disadvantaged. We all want to be like Sue.

*Ms. Halla is a shareholder at Briggs and Morgan. She served as HCBA president in 1995-96.*

## Judge Peter A. Cahill

By *Justice David Lillehaug*

How appropriate that the HCBA bestows its Professionalism Award on Chief Judge Peter Cahill in 2016—the same year he ends his distinguished tenure as leader of the Fourth Judicial District.

Cahill came to the bench with a resume to envy. Graduating magna cum laude from the University of Minnesota law school, he hit the courtroom floor running as a public defender. He mastered criminal defense. Then he hung up his own shingle. He mastered private practice. In 1997, he joined the county attorney's office. He mastered prosecution.

Once a prosecutor, his rise was meteoric. Only three years later he became the chief deputy to County Attorney Amy Klobuchar. (She did pretty well with him at her side, and thereafter.)

Others recognized Cahill's gifts. Gov. Tim Pawlenty made him a judge in 2007. Three years later, his colleagues promoted him to assistant chief judge. In 2012, they made him their leader.

Chief Judge Cahill has done a fine job running the Hennepin County judiciary. Well, maybe "running" is not quite the right word, "guiding" may be better. Big-city courts are tough places. They generate news, and not all of it is good. And they have their own intrigue. It's like herding cats, really big cats.

Chief Cahill guided the herd passionately and with a deep understanding of human nature. As a Gaelic blessing says, he was "gentle enough to comfort those who are hurting, but revolutionary enough to bring heaven to those who need it now." That rare combination is why, at his last "State of the Judiciary" address, Cahill received a warm and heartfelt farewell from judges and staff alike for a job well done.

Chief Judge Cahill leaves a distinct mark on 21st Century Minnesota justice. If any single district judge can be said to have brought our courts into the digital age, it is Cahill. The "eCourtMN" could fairly be labeled "peteCourtMN." As Chief Justice Lorie Skjerven Gildea summarized, "We're so grateful to Chief Judge Cahill; there's no question that his spirit, vision, and energy made eCourtMN possible."

Cahill leaves the Government Center to able successor Judge Ivy Bernhardson. He moves into the Family Law Center for his chosen juvenile docket. In the words of the Mass, this is "meet, right and salutary" because he truly cares about kids. (He will have even more time for high school mock trial, which he will again chair.) Pete Cahill is a leader who will continue to guide us.

*Justice Lillehaug is an associate justice on the Minnesota Supreme Court.*



*"MLM congratulates another great insured, as Paul Floyd becomes president of the Hennepin County Bar Association."*

## I have a share in my firm. Why not in the company that insures it?

Before I began insuring my practice with Minnesota Lawyers Mutual I didn't realize what a difference there was between a mutual insurance company and a commercial carrier.

With MLM, I have the opportunity to direct the company by voting for its attorney-led board of directors. Because of this, the company seems more concerned with responding to its policyholders' needs than with merely making a profit.

Now here's another big difference. Mutual companies pay their profits back to their policyholders, not to stockholders. My law firm has received thousands of dollars in dividends from MLM over the past several years, and that's important to us. It helps our finances of course, but it also enhances the feeling that we are owners of the company and have a stake in its future.

**MLM is the only endorsed professional liability insurance carrier of the Minnesota State Bar Association and a Mission Level Sponsor of the Hennepin County Bar Association.**

Protecting Your Practice is Our Policy.™

Get a fast quote today!

[www.mlmins.com](http://www.mlmins.com)

or contact

Chad Mitchell-Peterson

612-373-8691

chad@mlmins.com



# BAR FOUNDATION Posts Another Record Year

The Hennepin County Bar Foundation (HCBF) posted another record year, exceeding all previous year's fundraising efforts. From two major events, the *Bar Benefit* and the *Charity Golf Classic*, a total of \$212,000 was raised. Add to that the donations given with member dues renewals and the total raised is over \$230,000. These gifts allowed the HCBF to award grants of \$120,000 to Hennepin County nonprofits that promote and provide equal access to justice for all.

Our profession exists to enable equal access to all. To this end, since 1968, the HCBF has granted over \$2.7 million to deserving nonprofits. Many do not have the financial means to engage the legal profession to insure all clients are treated fairly, and that is why the HCBF's mission is so powerful. To many nonprofit agencies, our grants can make the difference between a successful year and just plain old business as usual.

The *Volunteer Lawyers Network* (VLN) is a prime example of our commitment. Celebrating their 50-year anniversary, this nonprofit has partnered from the beginning with the *Hennepin County Bar Association*. Since the foundation's inception, the HCBF has provided over \$800,000 of operational support to VLN.

However, there is more to do. The HCBF funded only 29 percent of the requested amounts this cycle. With the goal of increasing grants, the foundation has hired Development Manager Ron Osterbauer to more fully develop donations. Ron brings a wealth of expertise in development and you will begin to learn of additional opportunities to assist the HCBF as we increase and expand our funding opportunities this next year.

Meanwhile, you can help by supporting the HCBF through your gifts in the dues check-off opportunity or by attending our golf event, "*Tee It Up for Justice*" on August 8th at Burl Oaks Country Club.

Congratulations to the HCBF Board of Directors for outstanding work this past year. At its annual meeting June 15, the board thanked and bade farewell to those completing their terms of service: **Girard Miller, Bridget Hayden, Lisa Lamm Bachman, Tom Nelson, and Abby Schneider**. Also, **Vince Louagie** was recognized with a special President's Award for his "above and beyond" initiatives in leading the development efforts during the year. Thanks was expressed to all donors, who, with the board, provide such value to the community.

By 2015-2016 HCBF President  
**Sharna Wahlgren**



President Sharna Wahlgren (right) of the HCBF and President Kim Lowe (left) of the HCBA, present a check for \$50,000 to Skip Durocher, board chair of *Volunteer Lawyers Network* in recognition of their 50th anniversary. The amount reflects the HCBF's \$40,000 grant along with a special gift of \$10,000 from the association.

## FOR 2016, THE HCBF AWARDED THE FOLLOWING GRANTS:

Grant Recipients	Awarded
Volunteer Lawyers Network	40,000
Operation DeNovo	10,000
Battered Women's Legal Advocacy Project	7,000
Peace and Hope International	7,000
Seward Longfellow Restorative Justice Partnership	6,700
Legal Rights Center	5,500
Children's Law Center of Minnesota	5,000
Council on American-Islamic Relations, Minnesota	5,000
Minnesota Justice Foundation	5,000
Minnesota Assistance Council for Veterans	5,000
Sojourner Project	5,000
Division of Indian Work	5,000
LegalCORPS	4,800
Conflict Resolution Center	3,000
Lawyers Concerned for Lawyers	3,000
Minnesota AIDS Project	3,000
	<b>\$120,000</b>

**Your**

**“Permanent Record”**

**Under Minnesota’s**

**Expungement Laws:**

## The Process and Opportunities for Change

By Samuel M. Johnson

*Many Minnesotans<sup>1</sup> who have had relatively trivial interactions with law enforcement still suffer dire consequences. Our state’s expungement laws provide some relief, but, while the process has improved, the Legislature needs to make additional changes to Minnesota laws in order to prevent the adult version of a “permanent record” from haunting many innocent Minnesotans.*

### **History of Expungement**

“Expungement means to ‘erase all evidence of the event as if it never occurred...”<sup>2</sup> An expungement is an extraordinary form of relief designed to help a criminal defendant reintegrate into society. Those with criminal records often find it difficult to obtain work or housing, as potential employers and landlords commonly use criminal records to screen applicants. Expungement gives a criminal defendant the potential to earn a living and avoid homelessness, things which are important in preventing a downward spiral into more criminal activity.

In Minnesota, criminal expungement may be granted under a court’s inherent authority or statutory authority. Inherent expungement only seals court records, which is of little benefit to most petitioners. Conversely, statutory expungement is the mechanism by which most petitioners obtain meaningful relief. The Legislature first codified the statutory expungement procedures in 1996 to provide

consistency and uniformity to what had been a patchwork of differing district court expungement processes. Today, statutory expungements are granted under Minnesota Statutes Chapter 609A and Section 299C.11.<sup>3</sup> Expungement relief used to be limited to a select category of individuals, but the changes made in 2015 extended relief to a much larger group of people.<sup>4</sup>

In making the 2015 changes, lawmakers sought to provide many Minnesotans a second chance. State Rep. Carly Melin, the chief author of the bill in the House, said that “this legislation gives Minnesotans who made mistakes in the past a second chance so they can move on and become productive members of our communities.” State Sen. Bobby Champion, the chief author of the bill in the Senate, noted that “sealing or limiting access to criminal records is an important component in successful reintegration into society.” After signing the 2015 changes into law, Gov. Mark Dayton said, “People can’t turn their lives around and become law-abiding citizens if

they have no hope of finding a decent job or a place to live.”

## How a Record is Statutorily Expunged in Minnesota

The process of statutory expungement begins with Minnesota Statute Section 299C.11. If a petitioner does not qualify for the return of identification data under Section 299C.11, he or she may petition the court for relief under Chapter 609A. Under the old system, it was almost impossible to expunge a criminal conviction. With the 2015 changes, petty misdemeanor, misdemeanor, gross misdemeanor, and certain felony convictions are eligible for expungement if the right conditions are met. As long as the petitioner has remained conviction-free for an appropriate period of time following discharge from his or her sentence (called the “look-back” period), the petitioner may petition for expungement. After filing the petition and any supporting documentation, as well as serving those documents on all interested parties, the court will hear oral argument upon request.

In determining whether to grant expungement of a conviction, the court will consider the factors listed in Minnesota Statute Section 609A.03, subdivision 5. While no one factor is dispositive, courts reviewing a petition will commonly focus on the nature of the underlying crime; steps taken toward rehabilitation; the petitioner’s ability to obtain employment, housing, or other necessities; and the petitioner’s full criminal record. In order for the court to grant an otherwise meritorious petition, the petitioner must serve “the prosecutorial office that had jurisdiction over the offense for which expungement is sought and all other state and local government agencies and jurisdictions whose records would be affected by the proposed order. The petitioner shall also serve by mail the attorney for each agency and jurisdiction.”<sup>5</sup>

## Making Expungements More Effective

Nothing in this article should be read to mean that criminal expungements should be easy to obtain or that the public does not have an interest in knowing certain details of criminal convictions. Minnesota has a strong tradition of transparency in government, which includes many court and police records. However, the prevalence and ease of access to information in our society means many people who have never been found guilty of a crime face significant repercussions, oftentimes invidious and unseen to the individual, simply because of an arrest record.

The Legislature made significant progress with the 2015 changes, but several issues remain to be tackled: third-party arrest record websites, the “look-back” provisions, and how to treat a conviction following a successful stay of imposition. While not exhaustive, these issues present the greatest opportunity for improvement by the Legislature.

## Third-Party Arrest Record Websites

The most significant problem in obtaining a meaningful expungement is the prevalence of third-party websites where an individual’s arrest data, which includes a mugshot, persist long after any expungement. These websites will often remove a person’s data in exchange for a significant fee, even if the person was never charged with a crime. Given the sheer number of these sites, the fees associated with fully removing this information from the Internet can add up quickly.

Arrest-only records in Minnesota are both private and public data. The Minnesota Bureau of Criminal Apprehension classifies arrest-only records as private data.<sup>6</sup> However, arrest data is considered public data, “at all times in the originating agency.”<sup>7</sup> This system means any arrested person has his or her record readily available to all of the data-mining sites, even those that are not traditionally used for employment and tenant screening. These services are not subject to expungement orders and are not automatically required to remove an individual’s data.

Oftentimes, a mugshot accompanies the record, which allows potential employers and landlords to screen applicants. If an employer or landlord can circumvent private screening and pull an applicant’s mugshot for an offense which has been expunged, what purpose has the expungement truly served?

While Minnesota has a long history of open data in government, there is little necessity in providing mugshots and arrest records to these types of websites. However, it would be a nigh-impossible task to classify which organizations, like news outlets, need the data and which ones do not. The Legislature should enact legislation to prevent these types of websites from extorting money from citizens and essentially profiting from a government service.

First, the Legislature could reclassify arrest records and mugshots as non-public data until a conviction is entered or at least until charges are filed. This would help ensure that those who are

arrested and released without any prosecutorial involvement do not end up on one of these websites. However, the problem with this idea is that open arrest records help to protect the public from secret incarceration by the police.<sup>8</sup> The data ensures that the public knows who is in police custody and for what reason.

The more sensible idea for fixing this issue is to change how this data is disseminated to the public. The Legislature could require individuals who want arrest records/mugshots to physically appear at a jail for those records. Alternatively, an individual seeking these records could be charged a nominal fee related to the processing of the request. If the Legislature makes bulk data harder and costlier to acquire, while keeping it publicly available, it will reduce the financial incentive for these websites to continue operating.

## Look-Back Provisions

The “look-back” provisions, added in the 2015 changes, will be the easiest problem for the Legislature to fix. The problem with the look-back provisions is in the way they are written. They are admittedly unambiguous on their face. However, the unambiguous meaning of the provisions does not comport with the Legislature’s intent to give citizens a second chance. Functionally, the look-back provisions also do not make practical sense when applied by the courts.

The look-back provisions state, “and has not been convicted of a new crime for at least [X] years since discharge of the sentence for the crime.”<sup>9</sup> The look-back period is two years for petty misdemeanor and misdemeanor convictions/stayed sentences, four years for gross misdemeanors, and five years for felonies.<sup>10</sup> In order to file a petition seeking statutory expungement, a petitioner must have remained

crime-free for the look-back period, in addition to all other requirements.

But the wording of the look-back provisions

creates a static period of time following discharge from the sentence for a crime where a person must have been crime-free or be forever prevented from obtaining an expungement. The look-back provisions also create perverse situations where persons might not be able to expunge a minor misdemeanor because of a felony conviction, but still could expunge the felony conviction as long as they have remained crime-free following the felony conviction. Despite remaining crime-free for five years following discharge from the sentence on the felony, the fact that the original conviction occurred within two years of discharge from

**The Legislature made significant progress with the 2015 changes, but several issues remain to be tackled.**

the sentence on the misdemeanor means the misdemeanor conviction is permanently locked on the citizen's record.

Despite being unambiguous, these look-back provisions do not make sense. Instead, the proper analysis should involve a look-back from the date of the petition. If the petitioner has achieved the appropriate crime-free period before filing his or her petition, regardless of any intervening convictions, the person should be eligible to petition for expungement. Note, petitioners still must make the proper showing that they are entitled to expungement in order to proceed with the process, including a disclosure of their full criminal record and all subsequent rehabilitation efforts.

### Treatment of a Stay of Imposition

The third opportunity for change is clarification on how courts should treat an expungement petition for a conviction following a successful stay of imposition. This issue was recently decided by the court of Appeals, but rather than settle the issue, the Court's ruling only provided more reason for the Legislature to take prompt action.<sup>11</sup>

In felony convictions where the defendant receives a stay of imposition, the conviction begins as a felony which is subsequently deemed to be a misdemeanor following successful completion of the terms of probation.<sup>12</sup> Thus, a defendant has a felony on his or her record until successfully discharged from probation, when the felony is replaced with a misdemeanor. The applicable statutory language allows a petitioner to petition for the expungement of a misdemeanor if "the petitioner was convicted of or received a stayed sentence for a petty misdemeanor or misdemeanor...."<sup>13</sup> While the language states "convicted of or received a stayed sentence," and a person who receives a stay of imposition is initially convicted of a felony, it is unclear if the Legislature intended to allow a person whose felony conviction is later deemed a misdemeanor (following the successful completion of probation) to petition for misdemeanor expungement. If the convictions are treated as misdemeanors, they are eligible for expungement as soon as the look-back period has elapsed. However, if they are treated as felonies, the much longer look-back period

applies and the conviction must be on the list of enumerated felonies.

The Court of Appeals recently heard two cases, *State v. S.A.M.* and *State v. N.D.S.*, that address this issue. In *S.A.M.*, the appellant received a stay of imposition for a felony burglary charge, which was later deemed to be a misdemeanor. The district court denied the expungement petition, reasoning the petitioner was convicted of a non-enumerated felony. In *N.D.S.*, the district court reached the opposite result, expunging a non-enumerated felony conviction, which was later deemed a misdemeanor after successful completion of probation.<sup>14</sup> Finding the language of the statute to be unambiguous, the Court of Appeals affirmed the district court in *S.A.M.*, stating that successful completion of a stay of imposition for a felony conviction does not entitle a petitioner to seek expungement of that conviction as if it were a misdemeanor. While the procedural posture is different, it seems all but certain *N.D.S.* will be decided along identical lines.

**The Legislature inadvertently introduced confusion into the process with the look-back provisions, and it left certain problems untouched.**

It seems clear from Minnesota Statute Section



THE **Very**  
**best start.**

### A HEARTFELT DEDICATION TO NURTURING INTELLIGENCE

As the Twin Cities' premier child development experts for over 25 years, Kinderberry Hill has a proven reputation for providing the finest learning experience available for Minnesota's youngest learners.



**KINDERBERRY HILL**  
CHILD DEVELOPMENT CENTERS

VISIT [KINDERBERRYHILL.COM](http://KINDERBERRYHILL.COM) TO SCHEDULE A TOUR.

609.13, subdivision 1(2) that the Legislature intended to give certain felons a second chance if they demonstrated successful compliance with probation. In the words of Senator Champion, "It is very difficult for a former offender to integrate into our communities when an overwhelming majority of employers refuse to hire anyone with an arrest or criminal record, regardless of how long ago it was or the crime's relevance to the position for which an applicant is considered." If a conviction is reduced to a misdemeanor, many of the collateral consequences of a felony conviction (housing, employment, etc.) become less severe, but they are still present. If the Legislature truly intended to give Minnesotans a second chance by enacting the 2015 changes, it stands to reason successful stays of imposition should be considered misdemeanor convictions for the purposes of expungement.

For now, the Court of Appeals has held the statute is unambiguous; so a successful stay of imposition following a felony conviction will not allow a petitioner to petition for misdemeanor expungement. While the Court indicated it was sympathetic to S.A.M.'s circumstances, it nonetheless could not overlook the language of the statute. To the Legislature, this statement should ring loudly as an endorsement for further change to our expungement laws. If the Legislature truly intended to give Minnesotans a second chance, it must take this opportunity to clearly state that a successful stay of imposition makes a defendant eligible for a misdemeanor expungement.

### Looking Ahead

The Legislature took a great first step with the 2015 changes to Minnesota's expungement laws. However, it inadvertently introduced confusion into the process with the look-back provisions, and it also left certain problems untouched. While criminal expungement is a sensitive political subject, the Legislature has already shown its desire to give Minnesotans a second chance to clear their "permanent records." Going forward, the Legislature can and should take the data from almost two years of expungements under the new law and work to improve the process and protection for the Courts, practitioners, and all citizens.

Expungement law is something with which all practitioners, criminal and civil, should have some familiarity. Obviously, criminal defense attorneys need to know the law to properly advise their clients, and prosecutors need to understand the future ramifications of their plea deals. For civil practitioners, expungement offers a meaningful opportunity to engage in pro bono work. Many petitioners file pro se and struggle to comply with the law's requirements. With only a few hours investment, an attorney can

make a world of difference to fellow individuals by helping to expunge records which would otherwise impede that person's ability to find housing or meaningful work. Many Minnesotans deserve a second chance; your assistance can help make that a reality.

<sup>1</sup> While different organizations report different statistics, as many as one in four Minnesotans have a criminal record. While many are not, and should not be, eligible for expungement, there are some who can and should be able to move on from a criminal incident such as an arrest without charges.

<sup>2</sup> State v. M.B.M., 518 NW2d 880, 882 (Minn. Ct. App. 1994) (quoting Barlow v. Comm'r of Pub. Safety, 365 NW2d 232, 233 (Minn. 1985)).

<sup>3</sup> Minn. Stat. § 299C.11 does not technically expunge records; rather it requires that records be destroyed or returned to the subject on demand. Nevertheless, courts have found this to be a form of statutory expungement. State v. C.A., 304 NW2d at 357; M.B.M., 518 NW2d at 882.

<sup>4</sup> The changes referred to in this article as the "2015 changes" were passed by the Legislature during the 2014 session. They generally went into effect on January 1, 2015.

<sup>5</sup> Minn. Stat. § 609A.03, subd. 3(a).

<sup>6</sup> Minn. Stat. § 13.87, subd. 1(b).

<sup>7</sup> Minn. Stat. § 13.82, subd. 2.

<sup>8</sup> While this concern may sound far-fetched to some, as recently as 2015, Chicago police are alleged to have kept inmates "off the books" at the Homan Square facility. Dana Ford, Rosa, Flores, and Ed Payne, *Chicago's Homan Square Police Complex Under Fire*, available at <http://www.cnn.com/2015/12/15/us/chicago-homan-square-hearing/> (Dec. 22, 2015).

<sup>9</sup> Minn. Stat. § 609A.02, subd. 3(3)-(5).

<sup>10</sup> *Id.*

<sup>11</sup> State v. S.A.M., -- NW2d --, A15-0950 (Minn. Ct. App. Mar. 21, 2016).

<sup>12</sup> Minn. Stat. § 609.13, subd. 1(2).

<sup>13</sup> Minn. Stat. § 609A.02, subd. 3(3).

<sup>14</sup> Appellate Case Number A15-1712.



**Samuel M. Johnson**

[SJohnson@skolnickjoyce.com](mailto:SJohnson@skolnickjoyce.com)

Samuel Johnson is an associate with Skolnick & Joyce in Minneapolis. He is a civil litigator in a variety of areas, including contract, employment, and family law. He previously clerked for the Hon. William H. Koch. He serves as a director on the University of St. Thomas School of Law Alumni Board and coaches St. Thomas's NYC Bar Moot Court team. He would like to thank Joshua Esmay and Ref. Richard Trachy for their help on this article.

*Congratulations*  
**Paul Floyd**  
**2016-2017 PRESIDENT**  
**HENNEPIN COUNTY BAR ASSOCIATION**

**WALLEN-FRIEDMAN & FLOYD, P.A.**

# Which Is Worse, Bankruptcy Court or Criminal Court: *How About Both?*

By Colin Kreuziger



*“Sworn statements filed in any court must be regarded as serious business.*

*In bankruptcy administration, the system will collapse if debtors are not forthcoming.”<sup>1</sup>*

Daniel Rohricht operated two jewelry stores in the Twin Cities area, Woodbury Jewelers and Apple Valley Jewelers. In 2009, he filed Chapter 11 bankruptcy petitions on behalf of both stores. The cases were later converted to Chapter 7, and the businesses were liquidated by two Chapter 7 trustees: Nauni Manty for Woodbury Jewelers, and Patti Sullivan for Apple Valley Jewelers. Instead of disclosing all of the jewelry to Manty and the bankruptcy court in the Woodbury Jewelers matter, Rohricht hid diamonds and other jewelry. When the bankruptcies concluded, he purchased new jewelry stores and brought the concealed jewelry to the new stores. He even remarked to the *Star Tribune* that his bankruptcy cases weren't like

“another mini Denny Hecker deal.”

Unfortunately for Rohricht, Manty ultimately discovered his fraud. During the Chapter 7 case, Manty sent one of her attorneys to pose as a shopper. She took photographs of jewelry, and Rohricht insinuated that he had additional jewelry located at his home. Manty was awarded a judgment against Rohricht by the bankruptcy court based upon his fraudulent activities. When Manty discovered that Rohricht had opened a new store in Wisconsin, she obtained an ex parte order from the bankruptcy court to seize the assets. Rohricht was surprised to find Manty at his new store with U.S. Marshals at her side and the bankruptcy court's order in hand. Manty

found many items of missing jewelry. She also recovered a diamond from the Apple Valley Jewelers case.

The U.S. trustee<sup>2</sup> referred Rohricht to the U.S. attorney for prosecution. Rohricht pled guilty to concealment of bankruptcy assets.<sup>3</sup> He was sentenced to 30 months in prison, supervised release of three years, and ordered to pay restitution of \$49,559.41 to Manty and a \$5,000 fine.

## Criminal Referrals

Each year, the U.S. Trustee Program refers thousands of cases like Rohricht's to the appropriate authority for prosecution. In comparison to the total number of bankruptcy cases filed, however, the number of criminal referrals is quite small. For example according to the DOJ's annual report, 921,137 bankruptcy cases were filed in fiscal year 2014 in districts covered by the U.S. Trustee Program.<sup>4</sup> During the same time period, the U.S. Trustee Program made 2,080 bankruptcy and bankruptcy-related criminal referrals. Tax fraud was the most common allegation, followed closely by various bankruptcy crimes (18 U.S.C. §§ 152, 157.) Approximately 40 percent of the referrals resulted in declination of prosecution. Approximately 35 percent were under review by the U.S. attorney, and approximately 24 percent were with the appropriate investigative agency.

How does a bankruptcy case transform into a criminal case? Usually, the matter is referred by the U.S. trustee, a Chapter 7 trustee, or a bankruptcy judge. In fact, the criminal code requires the Chapter 7 trustee, the U.S. trustee, and bankruptcy judges to refer potential criminal violations to the U.S. attorney. The bankruptcy code also imposes upon the U.S. trustee a separate statutory duty to notify the U.S. attorney of crimes. In addition, the criminal code requires the attorney general to designate the U.S. attorney and an FBI agent as the contact point for criminal referrals of bankruptcy crimes. And the code requires the bankruptcy courts to establish procedures for making criminal referrals.

## Heightened Scrutiny

A bankruptcy case involves heightened scrutiny of the debtor's financial affairs. A Chapter 7 trustee's duties include, among others, investigating the debtor's financial affairs and objecting to the debtor's discharge, where advisable. The debtor must also provide his or her most recent federal income tax return (or a transcript) to the Chapter 7 trustee, and to any creditor who requests a copy. The Chapter 7 trustee examines the debtor under oath at a mandatory meeting of creditors. Any party

in interest may examine the debtor separately pursuant to Fed. R. Bankr. P. 2004.

The scope of the examination at the meeting of creditors or pursuant to rule 2004 is quite broad: the examination may relate to "the acts, conduct, or property or to the liabilities and financial condition of the debtor, or to any matter which may affect the administration of the debtor's estate, or to the debtor's right to a discharge." In fact, some courts have described this investigative process as "broader than the scope of discovery under rule 26 of the Federal Rules of Civil Procedure" and "a fishing expedition."<sup>5</sup>

## The Relationship Between Denial/Revocation of Discharge and Criminal Liability

If fraud is discovered during or after the bankruptcy case, the debtor stands to lose his or her bankruptcy discharge. Denial (or revocation) of a debtor's discharge has been referred to as "the death penalty" in the context of a bankruptcy case.<sup>6</sup> While denial or revocation of discharge is surely the harshest penalty known to bankruptcy law, the facts underlying a denial of discharge may result in a still harsher consequence: a criminal charge. In fact, the statutory provisions dealing with denial or revocation of discharge closely resemble provisions of the criminal code.

Leonard Chavin's case illustrates the typical progression of a bankruptcy case to a criminal case. Chavin's creditors petitioned him into a Chapter 7 bankruptcy.<sup>7</sup> Once in bankruptcy, he made numerous misrepresentations or omissions. These included failing to disclose his sole ownership of a real estate management company, \$1.6 million in income, and a valuable stock option. He also testified falsely at a deposition on the advice of his attorney.<sup>8</sup>

The Chapter 7 trustee sought denial of Chavin's discharge for concealment of assets<sup>9</sup> and false oaths, alleging 40 false oaths.<sup>10</sup> The bankruptcy court took the unusual step of granting summary judgment to the Chapter 7 trustee. In opposing summary judgment, Chavin provided excuses for his nondisclosures that the Seventh Circuit characterized as "ridiculous." For example, he claimed that he failed to disclose his income because no one asked him directly about his earnings.

Chavin's case offended Judge Richard Posner sufficiently to trigger a criminal referral to the Department of Justice in the body of the Seventh Circuit's opinion. As Judge Posner obviously

understood, the statutory language of § 727(a) of the bankruptcy code parallels the language contained in 18 U.S.C. § 152.<sup>11</sup>

A grand jury then indicted Chavin and his attorney on a total of 15 counts of tax fraud, perjury,<sup>12</sup> and bankruptcy fraud. Chavin and his attorney were convicted and sentenced to 37 months and 33 months in prison, respectively.<sup>13</sup>

## Other Criminal Violations

As Chavin's case illustrates, tax fraud and bankruptcy fraud are frequently intertwined. Other common referrals include identity theft<sup>14</sup>, perjury, and mail and wire fraud.

The case of Michael Recker illustrates how fraudulent representations in a bankruptcy case can support other criminal charges. Recker sold a combine for over \$50,000 two months before he filed a Chapter 7 bankruptcy case.<sup>15</sup> He did not disclose the sale of the combine on his bankruptcy documents, and he lied about the sale at the meeting of creditors. Later, he wrote a letter purportedly signed by a third party and filed the letter with the bankruptcy court. The falsely letter claimed that the third party owned the combine.

The U.S. trustee objected to Recker's discharge on the grounds that he concealed or transferred property with intent to defraud his creditors and made multiple false oaths in his bankruptcy case. After Recker defaulted and had his discharge denied, the U.S. trustee referred the matter to the U.S. attorney for prosecution.

A grand jury indicted Recker for, among other crimes, wire fraud, identity theft, and bankruptcy fraud. Recker's wire fraud charge was based on

**In 2014, the U.S. Trustee Program made 2,080 bankruptcy and bankruptcy-related criminal referrals.**

the fact that the bankruptcy court clerk transmitted the false letter via the court's electronic filing system. In fact, any false oath contained on the bankruptcy schedules or statement of financial affairs can trigger liability for mail or wire fraud.<sup>16</sup> This is true because both the internet and the mail system are used in every bankruptcy case.

Recker was also charged with identity theft when he filed the forged letter with the bankruptcy court. Although Recker ultimately pled guilty to one of the bankruptcy fraud counts (the wire fraud and identity theft counts were dismissed), the court ruled that the government's indictment sufficiently stated an offense with respect to the wire fraud and identity theft counts. The court sentenced Recker to 46 months in prison, a three-year term of supervised release, and restitution

in the amount of \$26,267.24 for his crimes.

**Conclusion**

Statistically speaking, the transformation of a bankruptcy case to a criminal case is a relatively infrequent occurrence. But the filing of a bankruptcy case exposes the debtor to heightened scrutiny of his or her financial affairs. And as the cautionary tales presented above illustrate, the consequences of a fraudulent bankruptcy filing may reach well beyond denial of discharge.

<sup>1</sup> Boroff v. Tully (In re Tully), 818 F.2d 106, 112 (1st Cir. 1987).

<sup>2</sup> The U.S. Trustee Program is a component of the U.S. Department of Justice. A U.S. trustee, appointed by the attorney general, oversees each of 21 regions located around the country. 28 U.S.C. § 581.

<sup>3</sup> Rohricht was convicted under 18 U.S.C. § 152(D).

<sup>4</sup> U.S. Department of Justice, Executive Office for U.S. Trustees, Annual Report of Significant Accomplishments for Fiscal Year 2014, available at <https://www.justice.gov/ust/annual-reports-significant-accomplishments> (last visited April 4, 2016).

<sup>5</sup> See, e.g., In re Apex Oil Co., 101 B.R. 92, 102 (Bankr. E.D. Mo. 1989); see also In re French, 145 B.R. 991, 992 (Bankr. D. S.D. 1992).

<sup>6</sup> See, e.g., Washington 1993, Inc. v. Hudson (In re Hudson), 420 B.R. 73 (Bankr. N.D.N.Y. 2009) (“A finding under § 727(a)(4) is the ‘death penalty of bankruptcy’—being the most draconian and punitive of measures in the Code.”).

<sup>7</sup> See In re Chavin, 150 F.3d 726, 727 (7th Cir. 1998).

<sup>8</sup> United States v. Chavin, 316 F.3d 666, 669 (7th Cir. 2002).

<sup>9</sup> The bankruptcy court may deny the debtor’s discharge if the debtor transfers, removes, destroys, mutilates, or conceals property with intent to hinder, delay, or defraud a creditor or an officer of the estate. See 11 U.S.C. § 727(a)(2). To support denial or revocation of discharge, the fraudulent act must occur within one year before the filing of the petition or any time after the filing of the petition. See 11 U.S.C. § 727(a)(2). There are, of course, time constraints for the filing of actions to object to or revoke discharge. See 11 U.S.C. § 727(e); Fed. R. Bankr. P. 4004(a).

<sup>10</sup> In re Chavin, 150 F.3d at 729.

<sup>11</sup> For example, 11 U.S.C. § 727(a)(2)(A) and 18 U.S.C. § 152(7) focus on knowing and fraudulent concealment of property of the debtor. 11 U.S.C. § 727(a)(2)(B) provides an even tighter fit with 18 U.S.C. § 152(D): both statutes reference knowing and fraudulent concealment of bankruptcy estate property from a trustee or creditors. In addition, the language of 11 U.S.C. § 727(a)(4)(A) tracks closely with that in 18 U.S.C. § 152(2) (3). Similarly, the language of 11 U.S.C. § 727(a)(4)(D) parrots 18 U.S.C. § 152(9).

<sup>12</sup> Chavin’s attorney was convicted of perjury under 18 U.S.C. § 1623. United States v. Chavin, 316 F.3d at 670. A debtor can also be convicted of perjury for false statements made during the bankruptcy. See 18 U.S.C. § 1621; Bronston v. United States, 409 U.S. 352, 357 (1973).

<sup>13</sup> United States v. Chavin, 316 F.3d at 668.

<sup>14</sup> See, e.g., 18 U.S.C. § 1028A.

<sup>15</sup> United States v. Recker, 2013 WL 785643, at \*2 (N.D. Iowa

Mar. 1, 2013).

<sup>16</sup> See, e.g., United States v. Brown, 771 F.3d 1149, 1157–58 (9th Cir. 2014).



**Colin Kreuziger**

[Colin.Kreuziger@usdoj.gov](mailto:Colin.Kreuziger@usdoj.gov)

Colin Kreuziger is a trial attorney with the U.S. Department of Justice, representing the United States Trustee for Region 12 (which includes Minnesota). He graduated cum laude from the University of Wisconsin-Milwaukee, and then the University of Minnesota Law School where he was a member of the Order of the Coif and the Journal of Law & Inequality. He clerked for two years with Judge Bruce Peterson in Hennepin County, and then for one year with Chief Judge Robert Martin on the U.S. Bankruptcy Court for the Western District of Wisconsin.

## Why Take Chances?

CALL METRO LEGAL

Why trust your process service and courthouse requests to an untrained, inexperienced delivery person? Let our trained and experienced staff of over 80 help you with these and more.

- Service of Process (locally or nationally) • Searches and Document Retrievals
- Real Property Recordings • Court Filings • General Courier Service and Mobile Notary
- Secretary of State Transactions • Skip Tracing and Private Investigations

METRO LEGAL

legal support specialists since 1969

[www.metrolegal.com](http://www.metrolegal.com)

[service@metrolegal.com](mailto:service@metrolegal.com)

(612) 332-0202

330 2nd Avenue South, Suite 150 Minneapolis, MN 55401-2217

Is your money working as hard as you?

GUARDIAN®

Products Provided Through

FOSTER KLIMA & COMPANY, INC.

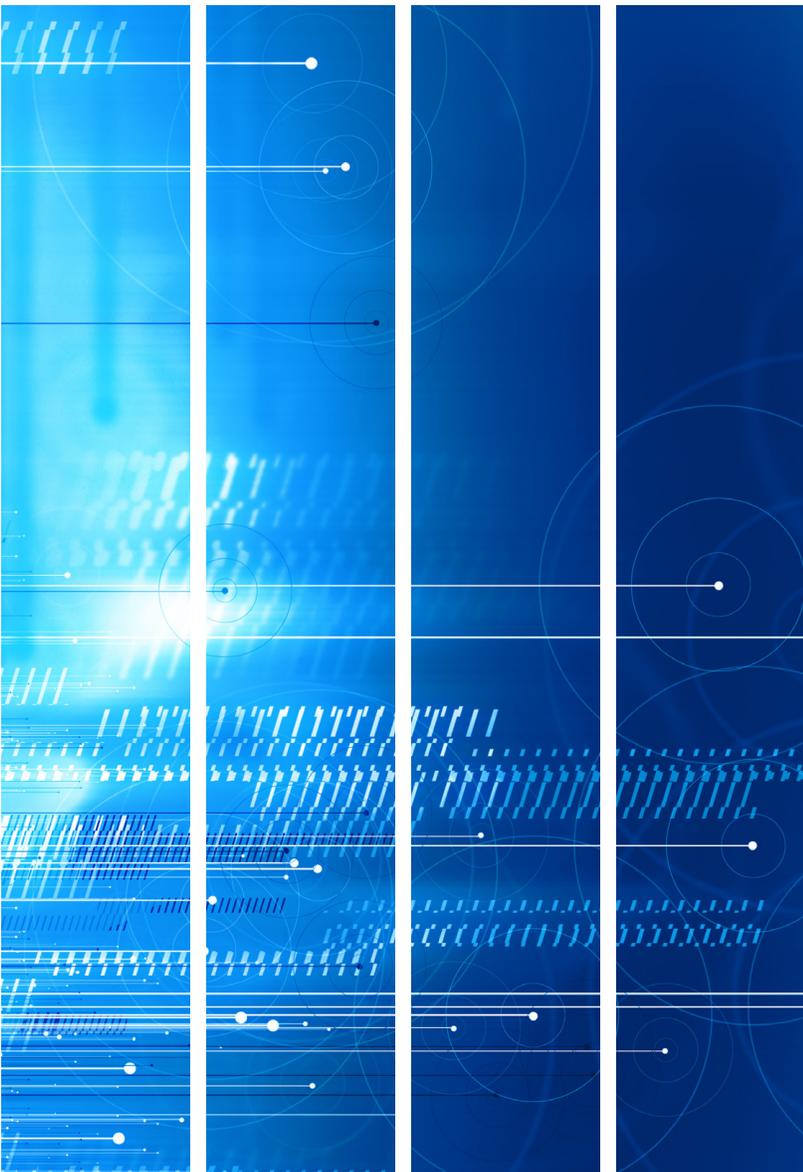
Nancy Schwartz

[nancyschwartzfinancial.com](http://nancyschwartzfinancial.com) • (612) 746-2203

Registered Representative and Financial Advisor of Park Avenue Securities LLC (PAS). Securities products and advisory services offered through PAS, member FINRA, SPIC. Financial Representative of the Guardian Life Insurance Company of America\* (Guardian), New York, NY. PAS is an indirect, wholly-owned subsidiary of Guardian. Foster Klima & Company, Inc. is not an affiliate or subsidiary of PAS or Guardian. 2015-15129 12/17



# Digital Evidence: The Impartial Witness



Within the past decade, the landscape of consumer technologies has changed drastically. Thanks to rapid development and innovation, computers as powerful as those that took us to the moon are now kept in our pockets. With such potential, electronic devices are now sources of useful information.

In response, Computer Forensic Services analyzes digital evidence within the contexts of e-discovery, incident response and litigation support. CFS has an unmatched background in the examination of electronic evidence. Our expert forensic examiners have many years of professional experience in both law enforcement and information technology. We assemble narratives and construct timelines of computer activity. We are known for our ability to relay complex technical findings in a manner that can be easily understood, which has proven useful in litigation. We act as a conduit for electronic evidence to speak for itself.

601 Carlson Parkway, Suite 1250  
Minnetonka, MN 55305

952-924-9920

[www.compforensics.com](http://www.compforensics.com)

Robert C. Whipps asks:

## What impact are crime documentaries such as *Serial* and *Making a Murderer* having on our criminal justice system?



David Bernstein

"Juries have become more skeptical of the criminal justice system. That is something I have to address in voir dire: I must ensure that the jury members keep an open mind about the case they are here for, especially before any evidence has been presented, and not associate it with cases they have heard about in the media."

**David Bernstein**

Prosecutor, Minneapolis City Attorney's Office

"The Steven Avery documentary and the Black Lives Matter Movement have challenged the American public and therefore the jury pool to talk about the criminal justice system. Prior to the widespread media exposure there were entire groups of jurors who never considered the criminal justice system at all and/or could not conceptualize that an American system of justice would allow inequities to exist. To have juries now scrutinizing the State as opposed to just the accused is a shift in the right direction."

**Maria Mitchell**

Assistant Hennepin County Public Defender



Maria Mitchell

"The legal burden of "beyond a reasonable doubt" has become a discussion at the dinner table, not just in the courtroom. Jurors who are familiar with the documentaries express a tendency to scrutinize the State's evidence and, at times, view officer testimony with more skepticism than in years past."

**Debbie Lang**

Partner, Hallberg Criminal Defense

"Shows that highlight the cracks in the system and expose the humanity of the accused are important reminders that those who stand accused are still afforded protection. These shows illustrate that "innocent until proven guilty" is a pillar of the criminal justice system that cannot be chipped away without taking the whole system down."

**Adam R. Garber**

Criminal Defense Attorney, The Law Office of Adam R. Garber



Adam R. Garber

"Documentaries are the new crime novel. Stories of high profile criminal cases are an important part of our history and culture. From OJ Simpson to Robert Chaska, these cases capture the attention of citizens and prompt discussion with family and friends. That dialogue is an important check on the powers and actions of the government."

**Landon J. Ascheman**

Criminal Defense Attorney, Ascheman Law

"These documentaries have been overwhelmingly successful in showing the injustice of "the system" in cases with minimal physical evidence and doubtful witnesses. It is a call to action for juries to remain critical of the government, even in the face of the most serious allegations and gruesome details in the media. It is a reminder for defense attorneys to go beyond the police reports and dig deeply to fully investigate the facts of the case as well as the motivations of the witnesses. And finally, these documentaries painfully show that the decisions that are made by juries in a few hours of deliberation have lifelong and irreversible impact on the people involved."

**Lauren Campoli**

Criminal Defense Attorney, The Law Office of Lauren Campoli



Lauren Campoli

"I have yet to listen to an episode of *Serial*, but I watched *Making a Murderer* with a riveted curiosity reserved for train wrecks and other personal tragedies. At this point, the impact on the criminal justice system is somewhere between none and not enough. The conversation to date has focused on our collective opinion of Mr. Avery and his young cousin Brendan's guilt or innocence, rather than questioning if this is really how our system operates. The answer is, too often, 'yes.' The conversation is beginning to move to what judges and prosecutors can do to neutralize public sentiment, which is disappointing. I hope the discussion will eventually move to fixing systemic flaws. Change is a slow process, but I have hope."

**Thomas C. Plunkett**

Criminal Defense Attorney, Thomas C. Plunkett, Attorney at Law

"Overall, crime documentaries have promoted a thoughtful discussion of the criminal justice system among the general public. However, some crime shows do not seek to provide a truthful, fair account of what occurred, but rather seek to entertain. As long as viewers keep that in mind, these shows will not negatively affect the system."

**Shana Conklin**

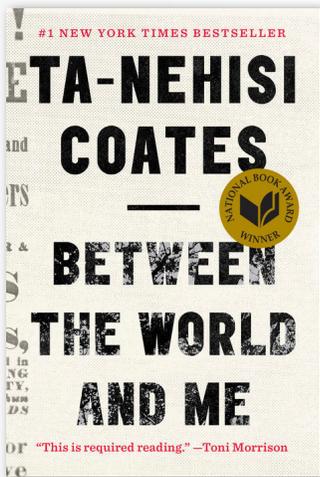
Assistant City Attorney, Campbell Knutson



Thomas C. Plunkett



Shana Conklin



## PRESENTED BY:

- Hennepin County Bar Association Diversity & Inclusion Committee -
- Hennepin County Equal Justice Committee -
- Hennepin County Judicial Education Committee -
- Minnesota Association of Black Lawyers -
- Volunteer Lawyers Network -

## A BENCH AND BAR DISCUSSION: "BETWEEN THE WORLD AND ME"

WEDNESDAY, JULY 20, 11:30 A.M. TO 1:30 P.M.

Hennepin County Government Center.  
C-12 Conference Room, 300 South 6th Street, Minneapolis, 55487

Michelle Alexander cautions in her review of the book *Between the World and Me* by Ta-Nehisi Coates that it will offer "no answers but instead challenges us to wrestle with the questions on our own. Maybe this is the time for questioning, searching and struggling without really believing the struggle can be won."

Please read the book on your own, and then come join the discussion as we wrestle with the questions presented about present day inequity and the challenges of the criminal justice system. Our distinguished panelists will present their perspectives and lead a discussion about the themes in *Between the World and Me*.

### Panelists:

- Camille Bryant, Assistant Hennepin County Public Defender
    - Jim Farwell, Assistant Hennepin County Attorney
  - Kimberly Hewitt, University of Minnesota Director of Equal Opportunity
    - Donald Lewis, Nilan Johnson Lewis, PA
    - Judge Lyonel Norris, Fourth Judicial District Court
- 2.0 Elimination of Bias CLE credits will be applied for by VLN.

**Bring your own lunch.**  
**No charge to attend. Space is limited.**  
*Register today at [www.hcba.org](http://www.hcba.org)*

## Please Join Us as We Celebrate 50 Years!

# V L N

*Making Pro Bono Happen for 50 Years*

VOLUNTEER LAWYERS NETWORK

# 50 YEARS

## OF MAKING PRO BONO HAPPEN



All proceeds benefit VLN, a volunteer based non-profit providing civil legal services to people in poverty. Volunteer Lawyers Network is a 501(c)(3) non-profit organization.

## VLN Riverfront Celebration

**Keynote Speaker: R.T. Rybak**

*President and CEO of The Minneapolis Foundation*

September 15, 2016  
Nicollet Island Pavilion

4:30 Social Hour | 6:00 Program

*Online registration at [www.vlnmn.org/riverfront](http://www.vlnmn.org/riverfront)  
Sponsorships are available, call 612.752.6648*

# Civilian Oversight of Law Enforcement

## A RETROSPECTIVE & LOOK FORWARD

By Judge Michael K. Browne



### Introduction

A healthy dialog has evolved touching on a national issue fundamental to American democracy: the interaction on the street between an individual and a police officer, and the right of the individual to be free from restraint by law enforcement authority in everyday matters.<sup>1</sup> Although local discussions have mainly taken the form of reviewing statistical reports, hearing personal stories, viewing videos shared on social media, or engaging in commentary on highly publicized events, taking a lower profile in the conversation is a very niche practice area of civilian oversight of law enforcement. I worked in this area as the director for the Minneapolis Civil Rights Department's Office of Police Conduct Review since the office's inception in 2012, as well as in its predecessor.

In its broadest terms, civilian oversight has been described as a process where civilians

not involved in the police chain of command review citizen complaints or other allegations of misconduct against sworn police officers to address police accountability. In practice, this area has grown into a hybrid of criminal law, combined with employment and labor law, with a healthy dash of police policy and procedure, all mixed into an administrative process run by local government.

To begin, the Minneapolis Police Department has a 148-year history of professionalized law enforcement culture. In contrast, civilian oversight in Minneapolis has existed for 25 years. This establishment gap requires civilian oversight to pursue incremental change. Moreover, civilian oversight in Minneapolis is still establishing its scope of authority, its culture, and—most important to the core concept of public engagement—its measures for success. Historically, the accomplishments of oversight agencies across the country have been measured

by the amount and severity of discipline resulting from the process. This measure is considered by many to be appropriate, even though Minnesota law exclusively reserves disciplinary decisions to the chief law enforcement officer; Minnesota civilian oversight serves only an advisory role.<sup>2</sup>

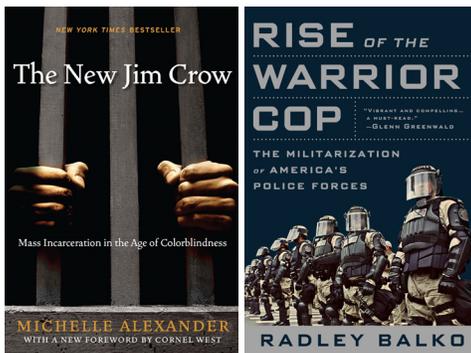
So, how can success of civilian oversight be measured? The oversight agencies must consider more holistic work in the collaborative process of building partnerships with law enforcement agencies, engaging and facilitating a dialog between the public and police, and examining alternative methods for impacting cultural changes within a law enforcement agency. It might not be flashy or grab headlines, but this focus is consistent with the principles of civilian oversight and is one of the many benefits this practice brings to public safety on a broad scale.<sup>3</sup>

### Measuring the Success of Civilian Oversight Agencies

The right to make disciplinary decisions in individual cases of police misconduct in Minnesota rests with the police chief. Such a legal framework is not an outlier; Minneapolis' model is more the norm. Since final disciplinary decisions are reserved to those chief law enforcement officers, measuring individual discipline is actually only evaluating law enforcement decisions, not those of civilian oversight agencies.

Additionally, focusing only on the complaint system and its outcomes cannot address all types of police misconduct or address necessary systematic change. For instance, misconduct that does not have a direct victim, something like a bribe, will often go unreported,<sup>4</sup> as could police misconduct perpetuated against community members who may feel disenfranchised and therefore unwilling or unmotivated to report it. This happens when community members feel they lack credibility whether it is due to presumptions of where they live, how they live, or because of involvement in criminal activity. Moving beyond the singular function of providing a misconduct reporting system allows a civilian oversight mechanism to view a bigger, and hopefully more complete, picture of police conduct in their community.

In addition to providing a more complete picture of actual police conduct, such a civilian oversight system provides a platform for civilian involvement in addressing systematic law enforcement and criminal justice policy issues. Two of these issues on the forefront of public consciousness and debate are mass incarceration, particularly of racial minorities, and the militarization of local police forces. These issues have been addressed in two widely read books: *The New Jim Crow* by Michelle Alexander and the *Rise of the Warrior Cop* by Radley Balko.



Alexander compares the mass incarceration, especially of black men, to the racial caste system perpetuated by the Jim Crow laws. Since law enforcement is the first contact in a potential continued relationship between a community member and the criminal justice system, the actions of police officers, and the accountability for those actions as provided by civilian oversight, is a valid part of that discussion.

On the other hand, Balko carefully traces the increased militarization of local police forces, all the way from the Middle Ages to the present. In current law enforcement activities, Balko is concerned about the use of military-like tactics

and equipment on the streets of American cities, against American citizens. As civilian oversight mechanisms ideally work directly with those local police departments, their potential militarization is a highly relevant topic to consider. It is only through a broader civilian oversight organization that the system can provide civilians a platform to engage with policy considerations, such as mass incarceration and militarization, and make recommendations that affect change on these types of issues.

Focusing only on the amount and severity of discipline also creates an adversarial relationship between the civilian oversight mechanism and the law enforcement agency being overseen. It gives the impression civilian oversight mechanisms are out to solely punish police officers for specific actions, instead of working together with the police to create better transparency, accountability, and overall law enforcement policy.

This adversarial relationship is in direct contrast to two significant points made in President Obama's Task Force on 21st Century Policing report.

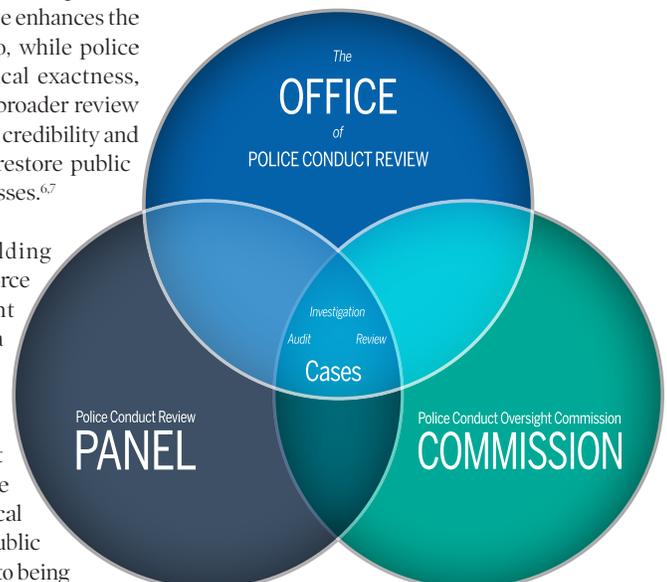
First, civilian oversight must include the law enforcement agency. "Part of the process of assessing the need and desire for new or additional civilian oversight should include input from and collaboration with police employees because the people to be overseen should be part of the process that will oversee them." This key concept is one strength in the Minneapolis model. Police involvement in the process allows for the identification of trends of misconduct and overall police department issues that an expert in the field may be more readily able to identify. While citizen review adds an important outsider objective, citizen reviewers are "almost certainly less expert in recognizing and evaluating police management issues" leading to complaints; thus, collaboration with the police enhances the civilian oversight process.<sup>5</sup> Also, while police involvement focuses on technical exactness, civilian involvement supports a broader review and discussion, lending essential credibility and transparency in the pursuit to restore public trust in police and review processes.<sup>6,7</sup>

Second, under the title "Building Trust & Legitimacy," the task force pronounces: "Law enforcement culture should embrace a guardian—rather than a warrior—mindset to build trust and legitimacy both within agencies and with the public."<sup>8</sup> This point signals the ultimate outcome desired from our national and local discussions; in short, garnering public trust of law enforcement equates to being

welcomed to do their job in communities they serve, not just seen as the traditional fighter of crime. This includes adopting procedural justice as the guiding principle for policies and practices for guiding interactions with citizens. Thus, this "guardian mindset" is an ideal target civilian oversight agencies can use to determine how to impact and measure their work.

### Procedural Justice and the Minneapolis Civilian Oversight System

Procedural justice plays a critical role in strengthening public trust in policing. The National Association for Civilian Oversight of Law Enforcement testimony for the president's task force stated: "Central to police legitimacy is the idea of procedural justice: perceptions of fairness in the administration of justice and the fair and impartial exercise of police discretion."<sup>9</sup> Providing procedural justice must also mean making a culture change within law enforcement agencies, and finding alternatives to traditional methods of handling officer misconduct allegations. This goal leads oversight agencies to move away from institutional discipline as a central practice and measure, and embrace alternative resolutions that engage the community and provide forms of restorative justice and positive policy reform. In the Minneapolis model, these alternative resolutions include the "coaching" process where the civilian oversight office oversees the complaint handling by police department supervisors, and the policy review and public meetings of the Police Conduct Oversight Commission. Some immediate benefits of these alternative systems are that they allow for more action to be taken on police misconduct, via the coaching process, and increase transparency of the police department's interworkings through public meetings with the commission.



The coaching process in Minneapolis consists of sending a complaint directly to an officer's precinct for assessment and appropriate corrective action. This is only done with low-level violations, and it is up to the officer's supervisor to determine if a violation of the police code of conduct occurred and assign an appropriate response, which can include coaching, counseling, or training. There are two particularly unique components to the coaching process. The first is that supervisors can assign corrective action even when it is determined a policy violation did not occur. That corrective action need not be disciplinary in nature but can instead focus on assisting officers to do their job to the best of their ability, instead of just within the bounds of written policy. The second unique component of coaching is that precinct supervisors are required to return documentation of their investigation, findings, and any action taken to civilian staff at the Office of Police Conduct Review and, if the supervisor's actions are found to be wanting, staff can return the report and ask for additional action to be taken. Therefore, civilians can still assure accountability in final coaching decisions. The use of coaching is another example of a positive, holistic approach to police conduct review and signals culture change in the department,

with officers prioritizing interacting with the community to the best of their ability, not just within the bounds of regulated conduct and true oversight by civilians of police supervisory action.<sup>10</sup>

The Police Conduct Oversight Commission was formed in the fall of 2013, following the elimination of the earlier Civilian Police Review Authority. Mayor R. T. Rybak appointed Andrea Brown, a local criminal defense attorney and resident of Minneapolis, to lead the newly formed commission. The commission, a group of civilian volunteers, holds public meetings each month. The commission works with the Office of Police Conduct Review, staffed by city employees, to complete research and study reports on proposed policy reform that the commission prioritizes.<sup>11</sup> This valuable partnership has produced important work product, including a proposed policy for the use of body cameras for the Minneapolis Police Department.<sup>12</sup> Projects of these kinds exemplify a holistic approach to civilian review, as they provide a venue for public input in police programming and contribute to policy inception, instead of reacting to a policy that has already been put in place.

### Alternative Measures in the Minneapolis Police Conduct Oversight System as a National Model

The Minneapolis hybrid model assesses the efficiency of its misconduct complaint system, monitors the number of complaints received, evaluates the implementation of recommended policies, and tracks the number of community members present at its events. Efficiency in case processes is a particularly relevant measure as it relates directly to procedural justice in ensuring that citizens' complaints are addressed and concluded in a timely manner. Moreover, it demonstrates effective partnerships with law enforcement, since civilian oversight works with the police department to secure the information it needs in order to complete investigation. Each quarter, office staff compiles data on case processing for the commission's use at its public meetings.

The Body Camera Research and Study project in Minneapolis is a good example of how success can be measured via implementation of policy. The Minneapolis Police Department asked for the commission's help gauging public support



## THE NATIONAL ACADEMY OF DISTINGUISHED NEUTRALS

*The following neutrals are recognized as Minnesota Chapter Members for Excellence in the field of Alternative Dispute Resolution*



Hon. John Borg  
(612) 840-1619



Patrick R. Burns  
(612) 877-6400



John W. Carey  
(612) 333-9743



J. Mark Catron  
(651) 332-8751



Just. James Gilbert  
(952) 767-0167



Roger Kramer  
(651) 789-2923



B. Jon Lilleberg  
(612) 255-1127



Paul F. McEllistrem  
(952) 544-5501



Linda Mealey-Lohmann  
(612) 791-2218



Philip Pfaffly  
(612) 349-5224



Mark Pilney  
(651) 702-1414



Paul J. Rocheford  
(612) 375-5937



James G. Ryan  
(612) 338-3872

Check Available Dates Calendars at [www.MinnesotaMediators.org](http://www.MinnesotaMediators.org)

NADN is an invite-only professional association of over 900 top-rated mediators & arbitrators throughout the US and is proud Neutral Database Partner to the national defense (DRI) and trial (AAJ) bar associations. For more info, visit [www.nadn.org/about](http://www.nadn.org/about)



Andrea Brown (center) leads a session of the Police Conduct Oversight Commission.

of body cameras and collecting community suggestions for an applicable policy. The commission collected that information through community listening sessions and research, and then produced a report and a recommended policy.<sup>13</sup> “The body camera project included best practices research, communication with other police departments, and community input via listening sessions throughout Minneapolis, as well as public comments at the commission,” said Chair Brown. The police department then took that recommendation into consideration as it developed its own draft policy. By looking at the two policies, the civilian oversight agency was able to track the adoption of the recommendations and measure their success (an additional cultural-change indicator) by the level of incorporated material. Additional communication and transparency measures emerged from the project because even though some recommendations were not implemented, a command-staff-level representative from the police department appeared before a public meeting of the commission to explain the department’s policy, explain the reasons other points were not included from the recommended policy, and take feedback from commissioners back to the chief for consideration.

This project demonstrates a key measure: proactive collaboration between both the police department and the commission. It shows the commission’s ability to gauge public opinion and translate those opinions into something useful for the police department, namely, a recommended policy. Next, it shows important culture change within the police department by demonstrating responsive accountability to the commission. Lastly, it shows the level of transparency in the policy development when the police representative returned to discuss the department’s draft policy with commissioners.

A police department’s use of policies recommended by a civilian body is another example of the advantage of a partnership between a civilian oversight system and law

enforcement, which is a tangible and practical alternative measure. Here, the police department’s implementation of such recommended policy reforms signals not only culture changes within the department but also indicates a willingness to implement suggestions from the budding practice of civilian oversight of law enforcement. This type of impact is meaningful and significant, which Police Chief Janeé Harteau expressed: “The MPD really appreciates the work the Office of Police Conduct Review does. It has helped us create more thorough, ‘fact-finding’ investigations, ultimately aiding in a number of our accountability processes, including officer coaching.” This is the formula for building public trust in law enforcement.

These are just some of the measures that Minneapolis now uses to assess the success of its civilian oversight system, with new potential measures on the horizon. A potential future measure could include surveying police officers on their understanding of civilian oversight, and their views on the police department’s transparency. Another potential measure could be surveying community members regarding their trust in the police, and whether that trust has increased through citizen oversight activities. Once public trust in the system becomes consistent, and the system is utilized to a reliable degree, the number of citizen complaints could also be a measure. A combination of measures would more accurately demonstrate the success of civilian oversight.



## Judge Michael K. Browne

Judge Browne of the Hennepin County District Court was the first director for the Office of Police Conduct Review and oversaw the transition from its predecessor, the Civilian Police Review Authority. He authored an extensive study of the police review systems, which resulted in a change in the local oversight law, a law review article on police practices, and co-authored several articles on Minneapolis’ innovative oversight system post-transition for a national publication. He is also a Certified Practitioner of Oversight by the National Association of Civilian Oversight of Law Enforcement. Judge Browne would like to thank Kaela McConnon Diarra, 2L at Mitchell Hamline College of Law, for her research support and sharp editorial eye.

## Conclusion

During my time as director of the Office of Police Conduct Review, I saw a positive overall movement toward holistic civilian review of law enforcement, a movement the office utilized to focus on collaboration between civilian oversight and the Minneapolis Police Department, to conduct dialog between the public and the police, and to promote culture change within the department. The hybrid system of civilian oversight, based on my experience in the field, creates a much stronger framework for providing the procedural justice communities need. Such systems must be promoted and supported by altering the measures of their success from focusing on the amount and degree of discipline to measures such as case-processing efficiency, public participation in civilian oversight activities, and the implementation of policy recommendations. These changes will make civilian oversight a strong and lasting player in law enforcement perception, policy, and performance.

<sup>1</sup> See, e.g., *TERRY V. OHIO*, 392 U.S. 1, 9 (1968). Locally, our community has had a tragic event in the death of Jamar Clark, which highlights even further the importance of this topic.

<sup>2</sup> This provision of state law is also referred to as the “Peace Officers’ Bill of Rights.” See MINN. STAT. § 626.89, subd. 17 (2012).

<sup>3</sup> Benefits of civilian oversight include protecting civil rights, supporting effective policing, ensuring greater accountability, helping to manage risk, increasing confidence in police, and building bridges between police and the communities they serve. See National Association of Civilian Oversight of Law Enforcement infographic, [www.nacole.org](http://www.nacole.org) (2014).

<sup>4</sup> Debra Livingston, *The Unfulfilled Promise of Citizen Review*, 1 Ohio St. J. Crim. L. 653, 655 (2004).

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

<sup>7</sup> An example of such increased transparency through civilian oversight in Minneapolis is the Police Conduct Oversight Commission’s monthly review of complaint case synopses and summaries, a practice that will be further explained later in the article.

<sup>8</sup> See *id.* at Executive Summary, I; see also, Pillar 1. Building Trust & Legitimacy, II.

<sup>9</sup> *The President’s Task Force on 21st Century Policing: Building Legitimacy and Public Trust Through Civilian Oversight*, THE NATIONAL ASSOCIATION FOR CIVILIAN OVERSIGHT OF LAW ENFORCEMENT (January 9, 2015).

<sup>10</sup> See Police Coaching Analysis, POLICE CONDUCT OVERSIGHT COMMISSION (2014), <http://www.minneapolismn.gov/www/groups/public/@civilrights/documents/webcontent/wcmslp-15587L.pdf>.

<sup>11</sup> For a full list of research and studies completed by the commission, see POLICE CONDUCT OVERSIGHT COMMISSION RESEARCH AND STUDIES, <http://www.minneapolismn.gov/civilrights/conductcomm/rs/index.htm>, (last visited April 12, 2016). It should be also noted that the commission partners with other civil rights organizations.

<sup>12</sup> See Body Camera Implementation Research and Study, POLICE CONDUCT OVERSIGHT COMMISSION (2015), <http://www.minneapolismn.gov/www/groups/public/@civilrights/documents/webcontent/wcmslp-148464.pdf>.

<sup>13</sup> “Body Camera Implementation Research and Study (September 2015),” <http://www.ci.minneapolis.mn.us/www/groups/public/@civilrights/documents/webcontent/wcmslp-148464.pdf>.

# Mental Health and Criminal Justice

**There is a better way: the Criminal Justice Behavioral Health Initiative**

By Leah Kaiser and Judge William H. Koch



*Every jurisdiction across the country seems to be raising concerns about the number of people with mental illness who come into contact with police and subsequently move through the criminal justice system. The impact is felt across public safety and health care systems and has caught the attention of local, state, and federal policy makers. The impact is real and significant.*

The concerns are not new and can be traced back to efforts spanning more than a hundred years. In 1827, the Massachusetts Legislature commissioned the State General Court to report on the conditions in the state's jails. This report documented that many prisoners with mental illness were being confined in degrading and inhumane conditions. The report included the specific recommendation to outlaw confinement in jails for all persons with mental illness and required such persons to be transferred to a treatment facility. In 1833, Massachusetts opened a 120-bed state lunatic hospital. More than half of the patients admitted in the first year were people transferred from correctional facilities. The concerns for incarcerated inmates with mental illness gained national attention in the 1840s and 1850s. Dorothea Dix, who is often credited with leading the most dramatic reform of the psychiatric system, championed the development of state psychiatric hospitals in large part to address the tragic conditions of persons with mental illness in jails and prisons. Her efforts were so successful that by the end of the 1800s, people with severe mental illness such as schizophrenia, bipolar disorder, and major depression accounted for less than one percent of the incarcerated population.

Almost a century passed before the country found itself again dealing with large numbers of inmates with mental illness in correctional facilities. The next major reform in psychiatric care began in the mid-1950s with the development of antipsychotic medications. Chlorpromazine, or thiorazine as it is commonly known, was approved by the Federal Drug Administration in 1955. This drug allowed persons with psychotic disorders to be safely managed in facilities other than state hospitals. Next, the enactment of

federal Medicaid prompted states to incentivize mental health services in environments that were not “institutes for mental diseases,” such as state hospitals. And, in 1963, President John F. Kennedy signed the Community Mental Health Act which was intended to build a community mental health care system. The president declared:



*If we launch a broad new mental health program now, it will be possible within a decade or two to*

*reduce the number of patients under custodial care...reliance on the cold mercy of custodial isolation will be supplanted by the open warmth of community concern and capability.*

These three significant events brought about the widespread movement of individuals with mental illness from state hospitals to the community, and the subsequent closure of those facilities. This phenomenon became known as deinstitutionalization. In 1970, there were more than 400,000 public psychiatric hospital beds nationwide. By 1975, this fell to 193,000 and by 1998, the number had decreased to just over 63,000 (an 85 percent decline). In Minnesota, the state hospital daily census fell sharply over a similar time period. In 1950, there were 10,578 state hospital beds and today there are, for example, only 115 beds available at the Anoka Metro Regional Treatment Center (AMRTC). The Department of Human Services also closed state-operated programs and regional facilities, further overburdening the local service system.

Unfortunately, the reality of developing the capacity to adequately treat persons with serious mental illness in the community never materialized. The community mental health system was never built to meet demand, leading to people being discharged from state hospitals without the community support envisioned by reformers. Within a decade of the enactment of the Community Mental Health Act, the state jail populations nearly doubled, filled up again with those suffering from serious mental illness.

Overreliance on custodial care has resulted in little progress in the treatment of people with serious mental illness. According to Leah Kaiser, with the Hennepin County Human Services and Public Health Department, “We’ve just swapped facilities.” Local and state hospitals are operating at capacity. Jails and prisons report high numbers of inmates with mental illness. The most recent assessment of the prevalence of persons likely to have a serious mental illness in the Hennepin County Public Safety Facility is approximately 33 percent, using the number of inmates each week who are taking psychotropic medications.

## What Is Criminal Mental Health Court?

Criminal Mental Health Court is a voluntary program for individuals with mental illness who exhibit behavior giving rise to criminal charges. The court allows these individuals a chance to enter court-supervised treatment. There are only three counties with this type of problem-solving court in Minnesota: Hennepin, Ramsey, and St. Louis.

In Hennepin County, Judge Kerry Meyer presides over Criminal Mental Health Court. According to Judge Meyer, the court accepts “competent defendants who have serious and persistent mental illness, traumatic brain injury, or are developmentally disabled.” In cases where the defendant’s competency is questioned, he or she first undergoes a separate Rule 20.01 evaluation, which Judge Meyer also oversees.

In Criminal Mental Health Court, the judge, prosecutors, defense attorneys, probation officers, social workers, and treatment providers work together to best address the defendant’s mental health issues. It is a process Judge Paul Scoggin—a former prosecutor in that court—describes as “collaborative and rewarding.” It often results in reduced hospital stays and fewer criminal actions by the participants.

There have been only three judges who have served in this role since 2003: Judge Richard Hopper, Judge Charles Porter Jr., and Judge Meyer. Since there is always the same judge, prosecutors, and defense attorneys, these legal professionals develop an expertise about mental illness, how it presents, and treatment options. If a person cycles through the criminal justice process, the continuity from having the same players makes the court better able to adapt its approach in order to find a better solution for that participant.

According to Judge Meyer, the Criminal Mental Health Court focuses on modifying participants’ behavior through positive reinforcement and occasional sanctions. To do this, the court provides services and supervision, but it also requires accountability.

Initially, the court makes sure a participant has stable housing, mental health professionals for therapy, and medications to address his or her mental illness. The court has regular follow-ups at four-, six-, or eight-week intervals to ensure the participant is attending appointments and taking the prescribed medication. Weekly follow-ups are needed if a participant is going through a crisis. The court also checks to make sure the participant is not self-medicating with other drugs or alcohol, and is not picking up new criminal charges.

Currently 53 percent of the participants in Criminal Mental Health Court “graduate.” Graduation means the participant has not used non-prescribed chemicals for at least 90 days and is stable with community mental health supports, and is usually housed and working. The legal benefits range from dismissed criminal charges to reduced or no jail time. The court is incredibly effective at improving its participants’ mental health and reducing criminal behavior stemming from poor mental health. Criminal Mental Health Court can be a positive and life-changing alternative for competent individuals struggling with mental illness and brushes with the law.

*By Saraswati Singh*

*Saraswati D. Singh is an assistant attorney general with the office of the Minnesota Attorney General practicing in the Public Safety Division.*

# Creating LIFESTYLE



Corey Gaffer Photography

Building value, beauty and function into unique Twin Cities homes.



**VUJOVICH**  
DESIGN • BUILD

612-338-2020  
www.vujovich.com  
Lic.#BC06077



Policy changes in Minnesota were made in response to public pressure regarding treatment services for persons held in jail or public safety settings. In 2013, Minnesota enacted the 48-hour rule. For persons in jail or a public safety facility, the 48-hour rule requires admittance of an individual with a mental health illness within 48 hours of a civil commitment order. The rule effectively bumped jail referrals above all other referral sources for admission to AMRTC. Beginning in 2013, the number of persons admitted to AMRTC from jails increased by 126 percent from 62 admissions in 2013, to 140 admissions in 2015. At the same time, admissions from psychiatric hospitals declined 79 percent from 223 admissions in 2013, to 47 admissions in 2015. While the hospital referral need did not likely drop during this time, the capacity was not significantly increased, and the jail referrals consumed most available beds. This year, the Minnesota Office of the Legislative Auditor examined the mental health services for people in jail or likely to be taken to jail. Several recommendations were made and are under review by the Legislature.

*“History has taught us that the criminal justice and the mental health systems are closely connected and changes in one cause predictable changes in the other.”*

History has taught us that the criminal justice and the mental health systems are closely connected and changes in one cause predictable changes in the other. What is needed is more global system reform that is collaborative and integrated. Innovative solutions are needed to address long-standing problems. Kaiser points out, “Instead of repeating history, we need to create a new future.”

This new future includes looking at other approaches showing positive signs elsewhere. In 2013, Hennepin County Judge Jay Quam and others toured a recovery center model in Orlando. At the time, Judge Quam observed, “Most mentally ill people in jail are in a hell they don’t deserve. Communities like Orlando are proving there is a more effective, economical, and humane way to treat mental illness and improve lives.” Hennepin County has set a course for a new future by working across systems to leverage resources, integrate data to inform policy, and develop specialized services to improve both client health and public safety outcomes.

More recently, in 2014, county administration launched the Criminal Justice Behavioral Health Initiative; Kaiser is the county lead on the program. Key stakeholders came together: local law enforcement agencies, the Hennepin County Sheriff’s Office, city and county

prosecutors, the Fourth Judicial District, the Hennepin County Public Defender’s Office, the Hennepin County Department of Community Corrections and Rehabilitation, the Human Services and Public Health Department, and Hennepin County Medical Center. They mapped out currently available services across the spectrum of criminal justice touch-points and identified specific improvements directed at policy and service-level changes to set priorities. The priorities include creating jail diversion and detention alternatives, establishing local community-based options for competency restoration, developing a specialized network of community providers (including housing) and ensuring discharge planning that creates linkages to community-based supports. The plan is being implemented.



**Leah Kaiser**

*Leah.Kaiser@hennepin.us*

Ms. Kaiser is the area manager of Adult Behavioral Health for Hennepin County Human Services and Public Health Department which serves as the local mental health and chemical health authority. She has a bachelor’s degree in psychology from the University of Minnesota and a master’s degree in Forensic Psychology from City University of New York John Jay College of Criminal Justice.



**Judge William H. Koch**

*William.Koch@courts.state.mn.us*

Judge Koch relied on the hard work of others to pull the primary laboring oar on writing this article. Of course, the real success in this area depends on the tireless work of his colleagues: judges Kerry Meyer, Jamie Anderson, and Jay Quam, and others in probation and the larger mental health field.

# MEET PUBLIC DEFENDER KATHY MOCCIO

Kathy is a national leader in immigration law. As a public defender, she works with non-citizen clients. “I am very enthusiastic about my role as a public defender because I have the opportunity to work on a defense team committed to assisting many interesting and compelling people. Our clients come to us from around the world, each with very different circumstances,” she said. She also teaches immigration law and is a frequent guest lecturer on the topic.



Her job requires a comprehensive knowledge of immigration law, flexibility in working with exigent clients, and a keen awareness of trends and policies.

## [ As told to Deborah Gallenberg ]

“I came on staff as a public defender following the United States Supreme Court holding in *Padilla v. Kentucky*, that to be constitutionally effective, a defense attorney in a criminal matter has an affirmative duty to advise noncitizens about the potential immigration consequences of a plea to criminal charges.”

“At court I meet with the principal public defender on a case and the potential client, and, if needed, an interpreter to be able to communicate with clients. I work with my colleagues to give clients information that empowers them to make decisions about their cases.”

“The clients I work with may not be familiar with the U.S. legal system. I spend time educating clients about the different roles of the prosecutor, public defender, and judge. I also provide “know your rights” information so that clients understand their rights if immigration officers question them.”

“Obtaining information can be challenging. Some clients are fearful to talk to me about their situation. To be successful, I need to obtain their trust. It’s not uncommon for clients to struggle with homelessness, poverty, and/or medical issues such as the impact of trauma—all of which impact our ability to reach clients.”

“I also try to keep an eye out for circumstances that impede our work or a client’s success in the United States. Some of them are struggling with the impact of war and persecution. They have difficulty sleeping because of nightmares and experience flashbacks or depression. My office has social workers who are able to help clients find rehab programs or culturally appropriate mental health service providers.”

“I am a frequent lecturer at national, regional, and local conferences, including those sponsored by the American Immigration Lawyers Association, Minnesota Bar Association, Minnesota Institute on Legal Education, the Advocates for Human Rights, and community-based organizations.”

“I am an adjunct professor of immigration law at the University of St. Thomas Law School. Some semesters I teach an immigration law survey course.”





# “Say What?”

Interpreter Services at Hennepin County Courts

By Erica E. Davis and Nicole A. Kettwick



The 193 member nations of the United Nations speak over 100 different languages. However, the delegations from each nation are required to speak in one of the six official languages used at the U.N.—Arabic, Chinese, English, French, Russian, and Spanish. If a delegate cannot speak one of the six languages, he or she is required to provide an interpreter to assist.

**"The best compliment an interpreter can get is to be told that the parties did not notice you were there. That means we did a great job."**

**-Esperanza Lopez Dominguez**

In comparison, here in Minnesota, the courts provide interpreters at no cost to the parties in over 70 languages.<sup>1</sup> Hennepin County leads the state in the variety of languages interpreted in court proceedings.<sup>2</sup>

Imagine being the interpreter in a criminal proceeding where the defendant makes loud outbursts or says inappropriate things on the record. If the defendant yells obscenities at the judge, would you be comfortable interpreting exactly what he or she said to the judge as the court reporter writes down every word you say? Interpreting in court is a difficult job. Especially in criminal proceedings where diction, tone, and nuance can change the way a jury thinks about the credibility of testimony or can alter whether a defendant understands his or her constitutional rights.

## A Brief History of Interpreters in Minnesota

Minnesota has consistently been at the nation's forefront when it comes to court interpreting. Since 1969, Minnesota has required courts to provide interpreters for people who are "handicapped in communication."<sup>4</sup> Prior to 1998, when the Legislature established the statewide interpreter program we know today, each court

was responsible for providing interpreters according to its own internal policies.<sup>5</sup> As one might expect, this led to inconsistent policies around the state. Judge Juan Hoyos, a Spanish speaker, remembers what the Fourth District was like before the Legislature established the certified interpreter program. When he was a law clerk in the Hennepin County Public Defender's Office, he was sometimes called on to interpret for a Spanish-speaking defendant.

Minnesota was one of the first states to require courts to provide certified interpreters free of charge to all interested parties.<sup>6</sup> In 1999, Minnesota was one of the four founding member states of the National Consortium for Language Access in the Courts (which has evolved into Language Access Services within the National Center for State Courts (NCSC)).<sup>7</sup> Around the same time, Minnesota formed its own internal working group to create certification standards and best practices for interpreters. The interpreter program has evolved since then, but the basic principles remain the same.

**Esperanza Lopez-Dominguez is a certified Spanish interpreter at both the state and federal level. Originally from Spain, she has been an interpreter in Minnesota courts since 1998. Before becoming a court interpreter she worked in medical interpreting where she learned to identify and interpret for various types of Spanish from different countries.**

## Minnesota Court Interpreter Program

There are three types of interpreters at the state court level: certified, rostered, and off-rostered. (American Sign Language interpreters have separate standards and separate testing procedures. There is also a separate federal

interpreter exam given once a year nationally.) Certified means the interpreter has achieved all the requirements to become a certified interpreter. These include a written English proficiency test; an ethics and legal terminology test; and, the national oral test on consecutive, simultaneous, and sight interpreting. In Minnesota, the national certification test is available in 14 languages.<sup>8</sup> The NCSC creates the exams based on national need. In 2004, Minnesota helped fund the creation of the national Somali exam because of our local need for certified Somali interpreters. Nationally, Somali is not a language in high demand, but in Minnesota Somali interpreter requests are second only to Spanish.<sup>9</sup>

For interpreters who speak languages that do not have an exam, and interpreters who have not taken the national oral certification exam, there is also the option of being on the "roster," meaning they have passed the written English proficiency test and the ethics and legal terminology test. These rostered interpreters are used when a certified interpreter is not available. The final category in state court interpreting is off-roster, meaning the interpreter has not passed a test, but self-identifies as being a competent interpreter.

The court is required to make its best efforts to provide a certified interpreter for any interested party who requests the aid of an interpreter.<sup>10</sup> If a certified interpreter is not available, the court may use an interpreter from the roster.<sup>11</sup> And, if an interpreter from the roster is not available, then an off-roster interpreter may be used.<sup>12</sup>

- In addition to potentially awkward moments, interpreting is a demanding job. It can be exhausting, emotionally draining, and at times require judgment calls that can affect court proceedings. In one study testing interpreters, something as simple as giving an address was interpreted correctly only 32 percent of the time:<sup>3</sup> Reading these interpretations may make you smile until you realize a court proceeding involves one of the most important moments in a person's life.

■ "Now, Mrs. Pena, you indicated that you live in East Orange, at 5681 Grand Street?"

### Translations:

1. "You say that you live in East Orange?"
2. "You told me that you lived in the west of Orange, at 56 Grand Street."
3. "Now, you told me that you lived at 4581 East Orange."
4. "Em, em, I live at 58 on, on, Hunt Street."
5. "I understand that you said that you lived in West Orange."
6. "And tell me whether you live on, on Grand Street, Senora Pena."
7. "You live in East Orange at 81 Grand Street."
8. "You indicated earlier that you lived at 5681 Grant Avenue in East Orange. Is that right?"
9. "I understand that you live in East Orange, on the street, at number 5681."
10. "You say that you were eating an orange?"

The Minnesota Court Interpreter Program also provides remote interpreting services for outlying counties where interpreters are not readily available.<sup>13</sup> In 2015, there were 708 remote interpreting events in Minnesota. The court primarily uses remote interpreting when sending a live interpreter is not possible or would be cost prohibitive.<sup>14</sup> This service is especially useful for urgent or unexpected matters and rare and exotic languages. Only certain, highly qualified interpreters are used for remote interpreting because it is substantially more difficult than interpreting in person. The main goal of providing remote interpreting is to give all parties across Minnesota access to the same high-quality interpreting services regardless of their location or language.

### When Does the Court Appoint an Interpreter?

Basic proficiency in English is not sufficient for a party to meaningfully participate in court proceedings without the assistance of an interpreter. Many people may be able to speak English conversationally, but court proceedings are substantially more complex than casual conversation. The Minnesota Judicial Branch provides a bench card to judges with sample questions to help determine a person's English

proficiency: "What is the purpose of your court hearing today?", "How did you learn English?", "What is most difficult about communicating in English?" In addition to these questions, the court may also consider the complexity of the proceedings, as well as the person's mispronunciations, expressions, gestures, comprehension, and communication with counsel.<sup>15</sup>

Just as the court may appoint an interpreter, it may also disqualify an interpreter for good cause.<sup>16</sup> Examples of good cause include, but are not limited to, knowingly and willfully making a false interpretation, disclosing confidential or privileged information, or failing to follow rules of the court. Interpreters must also take an oath to accurately interpret all that is said during the proceeding.

### Interpreting by the Numbers

When necessary, the court is required to

provide an interpreter for any defendant/party to a proceeding and testifying witnesses.<sup>17</sup> The court may also provide an interpreter to a nonparty with a substantial stake in the outcome such as participants in a Child in Need of Protection or Services (CHIPS) proceeding. The Legislature earmarks approximately \$3.2 million each year for the court interpreter program.<sup>18</sup> There are about 100 certified interpreters in Minnesota. Spanish is by far the most requested language for interpreters, followed by Somali in a distant second. There were over 26,000 interpreting events (when an interpreter interprets for a party) in 2015: 14,736 in Spanish, 3,984 in Somali, 1,912 in Hmong, and 658 in American Sign Language. Interpreters were called upon to assist in 78 different languages in court proceedings in Minnesota.

Ninky Mullin has been an interpreter for over 40 years. She began her career at 3M as a translator and then regional auditor for Central America and Africa. She began interpreting in Minnesota courts in the mid-1980s. She was among the first group of interpreters to become certified in Spanish in Minnesota in 1998. She is also fluent in several other languages including French, German, Danish, and Italian.

### Guidelines for Working with Interpreters

When using an interpreter, court officials need to keep some important guidelines in mind. First and foremost, the interpreter is there to perform a very difficult job and the accuracy of his or her interpretation can affect the outcome of a case. Attorneys, staff, and the court can work together to ensure that interpreters are able to do their very best job. It is important to know that a direct translation from English to another language, or vice versa, is not always possible. Interpreters have the difficult job of interpreting the meaning given by the speaker, not just the specific words—it is called interpreting after all, not translation. As Minnesota-certified interpreter Ninky Mullin said, "Interpreting is not a science, it's an art."

The most often heard request from interpreters is to slow down, especially when reading from a document. People naturally speed up their rate of speech when reading from a document or notes. It is also important to remember to speak to the party needing interpreter services as if the interpreter is not there. For example, an attorney should not ask the interpreter, "Can you tell my client to call me tomorrow?" Instead, the attorney should look at his or her client and say, "Please call me tomorrow."

As a real-life example, Judge Hoyos illustrates this issue as he recounted, "I remember an instance as a law clerk when I was asked to interpret. I went down to the courtroom and stood next to the defendant. The judge looked at me and began arraigning me for the plea."

**Onsite Fingerprinting Services for busy Executives or board members. ONE STEP SOLUTIONS for multi State Fingerprinting for corporate business or healthcare licenses. We print off site for large groups or Individuals. Purposes include: Immigration, adoptions, work or Travel in a Foreign Country , government contractors, and more.**



Mobile Electronic Fingerprinting  
Electronic and Traditional Ink Services At Your Location



**Mobile Electronic Fingerprinting and Consulting Services**  
**TRUSTED INK AND LIVESCAN FINGERPRINTING SERVICES THROUGHOUT THE UNITED STATES**

**VetConnex- Is an FBI Channeling Partner**  
**FBI Background Checks under DO 556-73 in 24 Hours**  
**8120 Penn Ave S Suite 259, Bloomington, MN 55431 952-595-5800**  
**[www.mobileelectronicfingerprinting.com](http://www.mobileelectronicfingerprinting.com)**

It is also imperative parties and attorneys not speak over one another. The interpreter can only interpret for one person at a time and in order for everyone to understand and for the record to be accurate, only one person can speak at a time. Although it is always the best practice for only one person to speak at a time to ensure the accuracy of the record, attorneys, especially, are known for forgetting that practice in the heat of oral argument or making objections. The appellate attorneys among us can especially appreciate the need for a clean and accurate record of the proceedings.

Accurate court interpreting is essential to the integrity of our judicial system. In Minnesota, we are fortunate to have an established certification system and a great network of interpreters. Each of us can do our part to help make our courts accessible to everyone by understanding the demands on court interpreters, and doing our best to make the system more responsive to everyone.

**TRY THIS AT HOME:**

Judge Kevin S. Burke suggests an easy exercise: Sit down with a friend. Have your friend read a text in English while you try to simultaneously repeat everything back in English as you hear it. You cannot do it. Really. Now, imagine doing that while also having to interpret everything from one language to another.

<sup>1</sup> Minn. Stat. § 611.33, subd. 3 (2016).  
<sup>2</sup> Court Interpreter Program Language Frequency Report CIP022 (1/1/2015-12/30/2015).  
<sup>3</sup> Roberta J. Cordano, "Access to Justice for Non-English Speakers," J. Articles from State Court Journal: 1-7.  
<sup>4</sup> "A person 'handicapped in communication' is a person who, because of difficulty in speaking or comprehending English, is unable to fully understand the legal proceeding or any charges made against the person, or the seizure of the person's property, or is incapable of presenting or assisting in the presen-

tation of a defense, and cannot obtain the due process of law. This definition includes not only people who speak only a foreign language, but also people who are deaf or hard of hearing or have speech impediments." Roberta J. Cordano, "Access to Justice for Non-English Speakers," J. Articles from State Court Journal: 1-7.  
<sup>5</sup> *Id.*  
<sup>6</sup> *Id.*  
<sup>7</sup> *Id.*  
<sup>8</sup> Spanish, Hmong, Somali, Arabic, Mandarin, Cantonese, Vietnamese, Haitian Creole, Lao, Korean, Russian, French, Khmer, and Portuguese. <http://www.mncourts.gov/Help-Topics/Court-Interpreter-Program.aspx>  
<sup>9</sup> Minn. R. Gen. Pract. 8.02.  
<sup>10</sup> *Id.*  
<sup>11</sup> *Id.* at (b).  
<sup>12</sup> *Id.* at (c).  
<sup>13</sup> "Bench Card: Courtroom Interpreting," Minnesota Judicial Branch (2012). Minnesota Judicial Branch Court Interpreter Program—Remote Interpreting Fact Sheet. [http://mncourts.gov/Documents/0/Public/News/Public\\_Notices/Remote\\_Interpreter\\_Fact\\_Sheet.pdf](http://mncourts.gov/Documents/0/Public/News/Public_Notices/Remote_Interpreter_Fact_Sheet.pdf).  
<sup>14</sup> *Id.* See Minnesota Judicial Branch Policy, Feb. 15, 2008.  
<sup>15</sup> *Id.*; State v. Charm, 680 NW2d 121 (Minn. Ct. App. 2004).  
<sup>16</sup> Minn. R. Gen. Pract. 8.03.  
<sup>17</sup> See Minn. Stat. § 611.32 subd. 1, Minn. R. Civ. P. 43.07; Minn. Stat. § 363A.12 subd. 1.  
<sup>18</sup> "In FY2016, \$3.16 million was distributed to cover interpreter costs." E-mail from Beau Berentson, Director of Communications and Public Affairs, Court Information Office, State Court Administration, Minnesota Judicial Branch to Erica E. Davis, Esq. (May 3, 2016, at 1:00 p.m.).

**Tips to consider when working with an interpreter:**

- Talk slowly and completely—interpreters often need a complete sentence to properly translate.
- Avoid using idioms, sarcasm, irony, or slang.
- Do not ask yes-or-no questions. Instead, consider asking the client or witness to explain themselves.
- Provide relevant materials to the interpreter before the hearing so key words, concepts, and names are known.
- Prepare for team interpreting (two interpreters) for any hearing of more than two hours.
- Ask the judge to voir dire the interpreter to ensure quality of the interpretation, if you feel this is necessary.
- Make sure your client or witness understands the interpreter.
- Advise your client to not say anything he or she does not want interpreted for the record.
- Advise your client that the interpreter is not there to answer legal questions.
- Be aware there may be several dialects within one language. If an interpreter uses a dictionary, be glad he or she is trying to be as accurate as possible.

Interpreter Ninky Mullin once had a Spanish-speaker say: "yo preparé el wall-aye-ye" "I prepared the [unintelligible]." After some thought, Ms. Mullin realized he was using a Spanglicized version of the word "walleye" because he had never seen that fish before coming to Minnesota. He did not know of a word in his language for walleye, so he had made it into a word that sounded like Spanish. Interpreters also have to beware of false cognates, words that sound like they have the same meaning but, in fact, do not. For example, instead of saying "alfombra," the Spanish word for "carpet," many native Spanish-speaking people say "carpeta" which sounds like the English word "carpet." "Carpeta" in Spanish actually means folder, but in Peru it means a small desk.

- Thank the interpreter when your hearing is done.



**Erica E. Davis**

[erica@thedavislaw.com](mailto:erica@thedavislaw.com)

Ms. Davis, The Davis Law Firm, practices criminal defense. She is fluent in Spanish and French and enjoys being able to communicate with her clients in their native tongues.



**Nicole A. Kettwick**

[nkettwick@brandtdefense.com](mailto:nkettwick@brandtdefense.com)

Ms. Kettwick, Brandt Criminal Defense, dedicates her practice to helping individuals who find themselves on the wrong side of the law.

The authors would like to thank Fourth Judicial District Judges Mary Vasaly, Juan Hoyos, and Kevin Burke; certified interpreters Esperanza Lopez-Dominguez and Ninky Mullin; and, Polly Ryan, MN Court Language Access Coordinator.

# Eyes and Ears of the Community

## A New ACLU App Allows Real-Time Reporting

By Jana Kooren

It was horrific and heartbreaking to watch the video of Walter Scott, an unarmed black man, being shot in the back and killed by a South Carolina police officer in April 2015. But, that video is the very reason why the officer who killed Scott was charged with murder. Following the incident, many South Carolina police were equipped with body cameras, but it was the video from a bystander that revealed discrepancies with the official police report.

The American Civil Liberties Union (ACLU) of Minnesota, along with 19 other state ACLU chapters, launched the “*Mobile Justice App*” late last year. The app allows individuals to record encounters with police on their phone and submit them to the ACLU. The app empowers the community to keep watch over their community. Any video recorded through the app is sent to the ACLU as soon as the recording is finished, which ensures the recording cannot be confiscated, deleted, or lost if a phone is damaged.

The app was released in Minnesota on November 14, 2015, the day before Minneapolis police shot and killed Jamar Clark—an incident which continues to compel an ongoing discussion about community-police relations. While there was no app footage of the shooting, the app was downloaded thousands of times since the launch and was used by protestors to film police actions at the Fourth Precinct occupation which followed the shooting. The app has been downloaded over 4,000 times in Minnesota alone and more than 300,000 times nationwide.

According to the ACLU, this app was developed because “without mechanisms for the immediate

and indisputable tracking of law enforcement conduct, the most vulnerable among us suffer unconstitutional, inhumane, and even fatal mistreatment at the hands of certain public officials,” said Charles Samuelson, executive director of the ACLU of Minnesota.

While having video footage of a police encounter does not necessarily change the outcome, it can help clarify disputed facts. Even if there is police body camera footage, video shot by eyewitnesses shows a different perspective. And publicly shot video submitted to the ACLU endures even if police body cameras don’t capture an incident, or if the video is later not available. “The Mobile Justice App puts evidence in the hands of an individual and the ACLU, not law enforcement, providing an independent check on government officials,” said Samuelson.

The Mobile Justice App is available for use on Android and iOS phones and can be downloaded free through Apple’s App Store or Google Play. The app enables users to register, record, witness, and report interactions with law enforcement. The apps also offer information on your constitutional rights.



There are four main functions of the app:

- **Record:** Allows citizens to capture exchanges between police officers and themselves or other community members in audio and video files that are automatically sent to the local ACLU.
- **Witness:** Sends out an alert when someone is stopped by police so community members can move toward the location and document the interaction.

- **Report:** Gives the user the option to complete an incident report and send it directly to the local ACLU.
- **Know Your Rights:** Informs individuals of their rights when they encounter law enforcement officers.

Once a video or report is uploaded, it is reviewed by the ACLU legal department. If there are any potential constitutional violations in the report or video the individual will be contacted by the ACLU for a follow up. The report is treated as confidential legal communication and will not be shared outside of the ACLU. However, the video is treated as non-legal material. This means a video could be used for advocacy by the ACLU and shared publicly. The videos will not be automatically made publicly available upon submission. A copy of the video remains on the user's phone so that person can share the video however he or she would like. If the video is shared, any confidentiality of the submitted content may be lost. The ACLU-MN has not received any requests for videos from any governmental body in Minnesota.

Samuelson pointed out that: *“with or without the Mobile Justice App, pressing record on your mobile device could make the difference in holding law enforcement accountable. While*

*police body cameras are becoming more widely used, we still believe that bystander video is an important additional check on police actions. Bystander footage shows the interaction from a different vantage point and empowers the user to actively engage in holding police accountable for their actions. Those images are not subject to police control, and the footage they capture is immediately available for the whole world to see. While this app will not completely solve problems of police abuse, it will be one additional check on law enforcement's power.”*



**Jana Kooren**

[jkooren@aclu-mn.org](mailto:jkooren@aclu-mn.org)

Ms. Kooren is the public education and communications director for the American Civil Liberties Union of Minnesota.

# ele<sup>∞</sup>ment



Element is a premier IT services firm focused on supporting top law firms in the midwest for over 25 years.

we know **[IT]**

952-943-1632 | [ele-ment.com](http://ele-ment.com)

4470 W. 78th Street Circle, Bloomington, MN 55435

# Local Collaboration Shapes National Policy: *Mellouli v. Lynch*

By Anna K. B. Finstrom

Moones Mellouli, a U.S. permanent resident and a green card holder originally from Tunisia, was deported as a result of his guilty plea to misdemeanor possession of drug paraphernalia—namely, a sock, which contained several pills of what was alleged (but never found or proved) to be Adderall. Mellouli's unusual plea, which he made in 2010, was the result of Kansas's broad definition of paraphernalia and his lawyer's good effort to minimize the possible immigration consequences of the charges against him. Nonetheless, based on the paraphernalia plea and after successfully completing probation (he was not required to serve jail time as a part of his criminal case), Mellouli was apprehended by immigration agents in 2012. He was ordered deported by an immigration judge, whose decision was affirmed by the Board of Immigration Appeals.

Mellouli was deported while his case was pending on appeal to the Eighth Circuit. He had been working as an actuary and a mathematics instructor at the University of Missouri, and he was engaged to marry a U.S. citizen. His deportation, notably at a moment when North Africa and the Middle East were in great turmoil, meant his life in the United States was essentially over. He was to be banned for life. The Eighth Circuit denied his petition for review, affirming the government's decision to deport him. In his own words, "The day I got deported, I was devastated and overwhelmed. I have cried from sadness and bitterness about that day."

Last year, a team of Twin Cities lawyers (which included experts from private practice, the nonprofit community, and academia) helped to take Mellouli's case to the U.S. Supreme Court—and won. The Supreme Court held his deportation was unlawful. The prior decisions against him were reversed, and the precedential agency decision relied upon by the government in deporting him (which, coincidentally, originated at our local immigration court in Bloomington) was overturned.<sup>1</sup>

*Mellouli v. Lynch*<sup>2</sup> is an important victory not only because of what was gained for Mellouli but also because of what was preserved for immigrants and their advocates nationwide. *Mellouli* safeguards three tools critical to the immigration lawyer or criminal defender with a noncitizen client: the categorical approach, which prevents immigration courts from re-adjudicating criminal matters; effective plea bargaining; and *Padilla*,<sup>3</sup> which established the right to know and consider immigration consequences in criminal proceedings. Finally, *Mellouli* restores some proportionality to the immigration consequences resulting from minor drug convictions.

## Overreaching Enforcement

Mellouli was apprehended and deported during one of the most aggressive immigration enforcement eras in recent times. Despite immigrant-friendly rhetoric, President Barack Obama has developed a harsh reputation as "deporter-in-chief."<sup>4</sup> Under Obama, over two million deportations have been carried out, which is probably more than any other presidential administration in history.<sup>5</sup> The Department of Homeland Security publicized 462,463 deportations in 2015 alone.<sup>6</sup>

The Obama administration's stated objective has been to strategically prioritize immigration enforcement resources, deporting "felons, not families;" "criminals, not children;" and "gang members, not a mom who's working hard to provide for her kids."<sup>7</sup> While comprehensive immigration reform has stalled for years in Congress, the president has undoubtedly struggled to strike a balance between building political credibility with immigration opponents by demonstrating enforcement capacity and addressing the humanitarian pleas of immigrant advocates. Obama's 2012 announcement of a formalized deferred-action program for "Dreamers" (undocumented immigrants under age 30 who arrived as children, have no significant criminal record, and have either completed high school or are currently in school) has provided temporary deportation protection and work permits to over half a million approved applicants.<sup>8</sup> A program offering similar protections to other undocumented immigrants, including the parents of Dreamers, has been tied up in federal courts since late 2014.<sup>9</sup>

Moones Mellouli no doubt suffered the consequences of the administration's push to demonstrate enforcement capacity. The government took a hardline position, imposing a bitterly disproportionate punishment on someone who had spent years navigating the long road to citizenship. Although the government's position was ultimately untenable, the political motivation to defend it was strong.

## The Supreme Court

Having lost at the local immigration court, the federal Board of Immigration Appeals, and the Eighth Circuit—and having been



The Mellouli team at the U.S. Supreme Court. Photo credit Jay Malin. Courtesy of the University of Minnesota Law School

actually deported by the Department of Homeland Security—Mellouli had only one hope for returning to the United States: to challenge the devastating precedent at the nation's highest court. Fortunately, his Supreme Court team was fit for the task. At its core was a collaboration of Twin Cities attorneys, which included clinical faculty and student attorneys (of which I was one) from the University of Minnesota's Center for New Americans, the Immigrant Law Center of Minnesota, and a pro bono team at Faegre Baker Daniels.<sup>10</sup> These entities, together with Mellouli's original immigration counsel, Michael Sharma-Crawford of Missouri, litigated the merits of the case.

The case hinged on the interpretation of the statute under which Mellouli was deported. It reads in relevant part, "Any alien who... has been convicted of a violation of...any law or regulation of a State, the United States, or a foreign country relating to a controlled substance (as defined in section 802 of title 21)...is deportable." 8 U.S.C. § 1227(a)(2)(B)(i).

Mellouli's Supreme Court team asserted that the plain language requires, in order to trigger deportation under this statute, the crime of conviction itself (either its elements or the underlying record of conviction)<sup>11</sup> and must involve a drug controlled by the federal government under 21 U.S.C. § 802. *Mellouli*

argued other convictions—involving, for example, a drug controlled only by a state (such as jimson weed, salvia, or one of several others controlled by Kansas), or a substance criminalized in a foreign country (such as poppy seeds, controlled by Jordan), or paraphernalia associated with an unidentified drug (as in Mellouli's case)—should not lead to deportation under this statute.

The team's research showed the fact that his conviction could be tied to any substance controlled by Kansas (versus a particular substance) was a circumstance typically limited to paraphernalia crimes and other low-level drug offenses. A 50-state survey of statutes and model jury instructions showed most convictions for more serious drug crimes involving possession, distribution, and manufacture of controlled substances would require a record identifying a particular substance—and therefore could still lead to deportation under Mellouli's reading of the statute.<sup>12</sup> Mellouli argued the different treatment of paraphernalia offenses on the whole—actually, in 19 states and under the federal law, possession of paraphernalia is not a crime at all<sup>13</sup>—reflects states' belief that such offenses are less serious, and therefore the failure of a paraphernalia conviction to trigger deportation under his reading is also appropriate as a policy matter.

The government urged that federal courts should defer to the interpretation of the immigration agency, as the Eighth Circuit did. The Eighth Circuit had affirmed Mellouli's deportation, reasoning any conviction associated with "the drug trade in general" was a deportable offense—even where, as in Mellouli's case, the conduct outlawed in Kansas (i.e., possession of paraphernalia) was not necessarily tied to the list of substances specified in the federal law. Mellouli countered this reading of the statute rendered the parenthetical phrase "as defined in section 802 of title 21" superfluous, and therefore was untrue to the text.

Mellouli's case was bolstered by national advocates who handled various angles as amici curiae. A group of over 90 law professors articulated how the government's approach jeopardized the longstanding rule preventing immigration courts from re-trying closed criminal matters. A collaboration of the National Association of Criminal Defense Lawyers, the Immigrant Defense Project, and the National Lawyers Guild argued deportation of a permanent resident is an unfitting consequence for a low-level crime such as possession of paraphernalia (conduct not criminalized under federal law), and substantially interfered with plea negotiations necessary to the basic functioning of the criminal justice system.

A joint effort of the National Immigrant Justice Center and the American Immigration Lawyers Association illustrated how the government’s proposed interpretation of the statute would substantially complicate the task of litigating deportation cases, affecting both overburdened immigration courts and often unrepresented respondents. The depth of expertise and the breadth of support for Mellouli’s case undoubtedly helped to bring the right result into focus.

In a powerful 7-2 decision, the Supreme Court held the government’s “sweeping interpretation departs so sharply from the statute’s text and history that it cannot be considered a permissible reading.”<sup>14</sup> Furthermore, the Court concluded the government’s approach led to anomalous results, was impracticable, and did not merit deference from federal courts.<sup>15</sup> The decision began the process of undoing Mellouli’s deportation.

Mellouli recently recounted the day he received an email informing him he won at the U.S. Supreme Court. He said, “I cried that day, too. It was tears of joy.”

### Changing Precedent

It is an uphill battle for noncitizens who become involved with the criminal justice system, so those advocacy tools which do exist are indispensable. As impact litigation, *Mellouli* was a fight to preserve the effectiveness of the tools immigration lawyers and criminal defenders with noncitizen clients depend on every day. And it was a great success.

First, *Mellouli* robustly upheld a longstanding rule in immigration law known as the categorical approach. Immigration law routinely requires that state criminal laws are tested for compatibility with federal statutes in order to determine whether a certain offense is one that leads to deportability. The categorical approach is the principle that deportability is tested not by actual conduct but by a conviction, “presum[ing] that the conviction rested upon nothing more than the least of the acts criminalized.”<sup>16</sup> The Supreme Court has said in analyzing the impact of a state-law offense for immigration purposes, the conviction is the “statutory hook.”<sup>17</sup> The categorical approach ensures the constitutional guarantees of the criminal justice system are not bypassed in a re-trial by an immigration court, which does not provide

the same procedural protections (for example, the rules of evidence do not apply nor is there a right to counsel in immigration court). It also ensures that allegations a defendant never had reason or opportunity to challenge are not later used against him for immigration purposes.

Second, *Mellouli* respected the importance of plea bargaining, particularly for noncitizen defendants seeking to mitigate immigration consequences along with criminal ones. The Supreme Court has “made clear that the negotiation of a plea bargain is a critical phase of litigation,” and for that reason has specifically interpreted the Sixth Amendment to include a right to effective assistance of counsel in plea bargaining.<sup>18</sup> Plea bargaining becomes extremely high-risk if those consequences are unpredictable and drastically disproportionate to the conviction. As in *Mellouli*’s case, the immigration consequence was unforeseen and far more severe than the criminal consequences of his plea (i.e., a fine and probation—no jail time).

Third, *Mellouli* defended the result of *Padilla v. Kentucky*, which held noncitizen defendants have a right to competent advice about the immigration consequences of a criminal

# Neutrals Like No Others



Access to the best mediators and arbitrators practicing today—that’s the power of difference™ only JAMS delivers.



**Philip L. Bruner, Esq.**



**Kathleen R. Gearin**  
Ramsey County  
District Judge, Retired



**Hon. James M. Rosenbaum (Ret.)**



**Hon. Janice M. Symchych (Former)**

Our Minneapolis Resolution Center provides a client-friendly environment, including spacious conference rooms, private meeting rooms and a top-notch administrative team for tackling cases of any type or size.

Resolving Disputes Worldwide | [www.jamsadr.com](http://www.jamsadr.com) | 612.332.8225  
JAMS Minneapolis | 333 South Seventh Street | Suite 2550 | Minneapolis, MN 55402

charge. In the words of the *Padilla* court, “The severity of deportation—the equivalent of banishment or exile—only underscores how critical it is for counsel to inform her noncitizen client that he faces a risk of deportation.”<sup>19</sup> *Padilla* was a game-changer for litigants and lawyers, both in criminal matters and in the immigration proceedings that follow, but it is only meaningful to the extent immigration laws are enforced in a way that is predictable, is faithful to statutory text, and honors constitutional rights.

Kathy Moccio, who provides in-house immigration expertise for the Hennepin County public defenders, addressed the real-life local impact of the *Mellouli* decision:

We often see clients who fled extreme violence in their home country—maybe they have received death threats or witnessed the murder of a family member. Sometimes, they have self-medicated to address flashbacks, nightmares, and depression. Prior to *Mellouli*, such clients faced the cruel reality of banishment to the country they fled. Now, they may have opportunities to obtain treatment and preserve their home and family. It’s a humane result that’s good for the individual and it’s good for the community.

*Mellouli* was also a course correction for beyond-the-pale aggressive immigration enforcement. The result reigned in what was an undue consequence—“the equivalent of banishment or exile”—for a minor offense by a U.S. permanent resident. As Moccio observed:

At a time when the U.S. is recognizing that the criminal punishment meted out to drug users is unjustly harsh, *Mellouli* provides some sense of proportionality to the consequences a noncitizen faces.

While the executive branch struggles with the overwhelming challenges posed by our broken immigration system, impact litigation like *Mellouli* helps mitigate the consequences for those who are presently in the midst of it.

And the work goes on. Sheila Stuhlman of the Immigrant Law Center of Minnesota, which runs the Public Defender Project to provide immigration expertise to public defenders throughout the state, put it this way:

The *Mellouli* decision, along with a few other recent immigration-related U.S. Supreme Court cases, has opened up a number of arguments that immigration practitioners can use in immigration court to argue that our clients are not actually deportable despite having a conviction

for drug possession or possession of drug paraphernalia. But given the complexity of immigration law and the recency of the decision, close consultation with immigration practitioners is still required when noncitizen defendants are at the stage of contemplating a plea to a drug or paraphernalia offense.

## The Aftermath

The aftermath of Mellouli’s Supreme Court victory was not without obstacles. On remand, the Eighth Circuit and the Department of Homeland Security searched for wiggle room in the decision, looking beyond the elements of the crime of conviction and attempting to use allegations from a dismissed complaint in Mellouli’s criminal record as a deportability hook.<sup>20</sup> Mellouli’s team asserted the attempted workaround was again counter to the basic principles of the categorical approach. The Solicitor General’s office ultimately agreed and laid out Mellouli’s impact on how immigration officials must treat drug crimes for all noncitizens through a settlement agreement in October 2015.<sup>21</sup>



Mellouli’s “Legal Permanent Resident” stamp in his passport.

In March 2016, about 10 months after the Supreme Court decision, Moones Mellouli returned to the United States. He reflected on his experience at the airport just before boarding the plane to return home:

The lead immigration officer brought me my passport and gave me back my green card. She told me “all is good now” and apologized for making me wait so long.

I put my green card in my wallet and kept my passport with my boarding pass in my hand. I left the terminal and headed to the escalator towards my gate. While on the escalator, I opened my passport and I saw the stamp with “LPR” [lawful permanent resident] on it.

At that moment, I smiled and I told myself: everything comes to an end; all the suffering comes to an end and great things will happen to good people. I thanked God, took a picture of the stamp, and sent it to my mom, my fiancée, my brother, and my lawyers. Then I got on the plane.

<sup>1</sup> Matter of Martinez Espinoza, 25 I. & N. Dec. 118 (BIA 2009).

<sup>2</sup> 135 S. Ct. 1980 (2015).

<sup>3</sup> 130 S. Ct. 1473 (2010).

<sup>4</sup> The Economist. *Barack Obama, deporter-in-chief*. <http://www.economist.com/news/leaders/21595902-expelling-record-numbers-immigrants-costly-way-make-america-less-dynamic-barack-obama>

<sup>5</sup> Hager, Nikki. *The Obama Administration and Immigration Policy: The Immigration Enforcement Record in Recent Years*. <http://www.truth-out.org/news/item/28939-the-obama-administration-and-immigration-policy-the-immigration-enforcement-record-in-recent-years?tmpl=component&print=1>

<sup>6</sup> U.S. Immigration and Customs Enforcement. DHS releases end of fiscal year 2015 statistics. <https://www.ice.gov/news/releases/dhs-releases-end-fiscal-year-2015-statistics>

<sup>7</sup> Obama, Barack. *Remarks by the President in Address to the Nation on Immigration*, Nov. 20, 2014. <https://www.whitehouse.gov/the-press-office/2014/11/20/remarks-president-address-nation-immigration>

<sup>8</sup> American Immigration Council. *Two Years and Counting: Assessing the Growing Power of DACA*. <http://www.immigrationpolicy.org/special-reports/two-years-and-counting-assessing-growing-power-daca>

<sup>9</sup> United States v. Texas, 136 S. Ct. 906 (2016); Texas v. United States, 809 F.3d 134 (5th Cir. 2015); Texas v. United States, 787 F.3d 733 (5th Cir. 2015).

<sup>10</sup> The merits team also included attorneys from Faegre’s Indianapolis office.

<sup>11</sup> A record of conviction includes nothing more than a charging document, a plea agreement, a plea colloquy, and/or jury instructions. *Mellouli* was decided under the “categorical approach” (looking only to the elements of a crime); the Court did not address Mellouli’s argument under the “modified categorical approach,” which sometimes allows a court to look to the underlying record of conviction. University of Minnesota Law School Center for New Americans. Practice Advisory for Criminal Defense and Immigration Attorneys, April 1, 2016: *The Impact of Mellouli v. Lynch on Minnesota Controlled Substance Offense*. [http://www.law.umn.edu/uploads/e6\\_06/e606aa2fe3350118a50140d\\_904b794ea/Mellouli-Practice-Advisory-Final.pdf](http://www.law.umn.edu/uploads/e6_06/e606aa2fe3350118a50140d_904b794ea/Mellouli-Practice-Advisory-Final.pdf)

<sup>12</sup> See Mellouli’s reply brief at \*17–18 & appendix.

<sup>13</sup> See Mellouli’s opening brief at \*39 & n.4.

<sup>14</sup> *Mellouli*, 135 S. Ct. at 1990.

<sup>15</sup> *Id.* at 1986–87, 1989.

<sup>16</sup> *Moncrieffe v. Holder*, 133 S. Ct. 1678, 1684 (2013).

<sup>17</sup> *Id.* at 1685.

<sup>18</sup> *Missouri v. Frye*, 132 S. Ct. 1399, 1406 (2012) (quotation omitted).

<sup>19</sup> 130 S. Ct. at 1486.

<sup>20</sup> *Mellouli v. Lynch*, No. 12-3093, 2015 WL 4079087 (8th Cir. July 6, 2015).

<sup>21</sup> University of Minnesota Law School Center for New Americans. Practice Advisory, supra note 11.



**Anna K. B. Finstrom**

[finstrom.anna@gmail.com](mailto:finstrom.anna@gmail.com)

Ms. Finstrom was a member of the Mellouli Supreme Court team as a student attorney with the University of Minnesota’s Federal Immigration Litigation Clinic. She will be joining Rinke Noonan in St. Cloud as an associate this fall.

# Protecting Veterans in the Workplace

Unbeknownst to many, veterans receive employment protections as veterans. This article explores one such protection, which, I suspect, is all-too-often overlooked by lawyers reviewing cases of discharged public employees.

In the Minnesota Veteran's Preference Act (VPA), the Minnesota Legislature sought to secure the position of veterans in the workplace by requiring public employers to give a preference to veterans in the hiring process, and permitting private employers to do the same. Minn. Stat. §§ 197.447 et. seq. In so doing, the Legislature explicitly recognized that: "Training and experience in the military ... and the loyalty and sacrifice ... are qualifications of merit which cannot be readily assessed by examination...."

This much is common knowledge. What is perhaps less well-known is that the VPA also protects honorably discharged veterans who work for public employers from wrongful termination.

Specifically, state and municipal employers in Minnesota may not remove veterans from employment "except for incompetency or misconduct shown after a hearing, upon due notice, upon stated charges, in writing." Employees who are given "due notice" by their employer of the "intent to discharge" waive their rights if they do not request a hearing within an amount of time designated by statute of the employer's notice. But veterans whose employers fail to give them due notice may invoke their right to a hearing anytime within six years of their termination. Thus, as the Minnesota Supreme Court explained in *Gorecki v. Ramsey County*, the VPA "was designed to take away from the [employer] the arbitrary power, ordinarily possessed, to remove [veteran employees] at pleasure;

and to restrict their power of removal the making of removals for cause." Put another way, subject to statutory exceptions, the general rule of at-will employment simply does not apply to veterans working for public employers.

Veterans who are terminated are entitled to their regular compensation until they are properly discharged through the VPA process. And this is true regardless of whether the veteran prevails on a claim for wrongful termination. Moreover, if the veteran prevails, he or she will also be entitled to reasonable attorneys' fees and costs.

Accordingly, in order to protect the rights of Minnesota veterans in the workplace, it is imperative to determine whether public employees who've been selected for termination are eligible veterans and whether they still have the opportunity to exercise their right to a hearing under the VPA.



## Matthew Frank

[mafrank@baillonhome.com](mailto:mafrank@baillonhome.com)

Matthew Frank is an associate at Baillon Thome Jozwiak & Wanta. He represents employees who've been treated unlawfully by their employers.

Send your practice pointers to Stephen C. Fiebiger at [fieblaw@earthlink.net](mailto:fieblaw@earthlink.net)



## Thank You Sponsors

Annual Mission Level: \$8,000



Annual Patron Level: \$3,000



Hennepin County Bar Association • 612-752-6600 • [www.hcba.org](http://www.hcba.org)

# We Are Family

**and Business  
and Intellectual Property  
and Immigration  
and Personal Injury  
and Real Property  
and Bankruptcy  
and Wills & Probate  
and Tax Law  
and Employment  
and Criminal Defense  
and Landlord/Tenant  
and Workers' Compensation  
and the list goes on ...**

When current clients or new callers to your office have legal needs outside of your practice area, remember that your colleagues in the Hennepin County Bar Association can help. With 200 participating attorneys—representing nearly every practice area—the **HCBA Lawyer Referral and Information Service** is the best place to refer those that you can't assist.

Lawyer Referral has been recognized for its quality by the ABA, and the excellent work provided by our experienced panel attorneys strengthens the reputation of all HCBA lawyers. Make referrals to your bar association colleagues with confidence. Think of us as family.



**Client Line: 612-752-6666**  
**Attorney Line: 612-752-6660**  
**Online: [www.hcba.org](http://www.hcba.org)**

# Hennepin Perspectives

Review by Megan Bowman

*In an age of true-crime fascination, 3½ Minutes, Ten Bullets reminds us murder is empty, cruel, and tragic.*

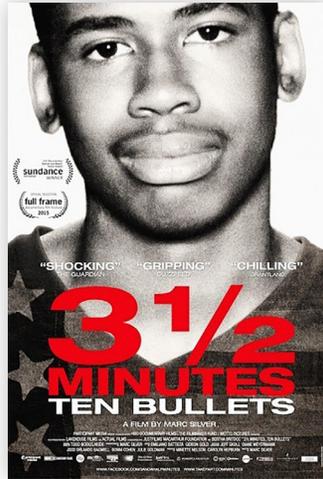
On November 23, 2012, the day after Thanksgiving, Michael Dunn and his fiancé arrived at a Gate gas station in Jacksonville, Florida, to pick up a bottle of wine after his son's wedding. They parked next to a vehicle containing four African-American teenagers. The boys had stopped for a pack of cigarettes and gum. While his fiancé shopped, Dunn, a middle-aged white male, asked the boys to turn down the volume of their music. Dunn did not like "thug music" or "rap crap." The driver complied with his request and the music was turned down.

A few moments later, the music was turned up again when one of the rear-seat passengers told the driver to turn the music back up. Seventeen-year old Jordan Davis did not like having to turn the music down at Dunn's request. At this point, Davis either exchanged words directly with Dunn, or he sang along with a song which made references Dunn mistook as being directed against him. Misunderstanding or not, the two exchanged angry, escalating words. Less than three minutes after arriving at the gas station, Dunn pulled a revolver from his glove compartment and fired ten bullets into the car. Three of those bullets struck and killed Davis.

Director Marc Silver narrates the aftermath of the Black Friday shooting. Dunn faced one count of first-degree murder and three counts of attempted second-degree murder. Silver's cameras capture the trial in a rare and impactful manner. Interviews with Davis's family and friends—those friends whose own lives were at risk on November 23—encase the trial with an account of Davis's life and, more importantly, his family's grief. Images of protest and controversy over Florida's infamous Stand Your Ground law also make an unsurprising appearance, as Davis's death came just months after the shooting of Trayvon Martin. The film's subject is specific, but its viewpoint is wide.

However, viewers used to defense-centered docu-series such as Netflix's *Making a Murderer* or the *Serial* podcast will find themselves wanting more from the film. There are few revelations about Dunn's history, mental state, or trial strategy. In fact, his beliefs and after-the-fact justifications seem peripheral to the film's depiction of his trial. Dunn and his story are simple: he shot at four unarmed teenagers but claims he acted in self-defense; he maintains Davis was pulling a shotgun or other type of barreled weapon and getting out of the vehicle toward Dunn's car, just after saying something about killing him. We are unaware of the full weight of the evidence presented as the movie cuts back and forth through the witnesses' testimony. Dunn's testimony is, really, the viewer's greatest resource in understanding his version of events. The only additional insight Silver gives us into the mind of Dunn comes from a few recorded jail-house phone conversations with his fiancé. In one of those conversations Dunn claims, "I'm not racist, they're racist."

This is certainly not the kind of film that spurs petitions on Change.org or Twitter crushes on Wisconsin defense attorneys. Instead, it is the kind



*3 1/2 Minutes, Ten Bullets*  
Director: Marc Silver  
Runtime: 98 min  
Available on HBO GO

of film that makes us think deeply about loss—the loss of children, of young black men, of community cohesiveness. We are invited to view Dunn for who he is—an adult who violently attacked a group of teenagers.

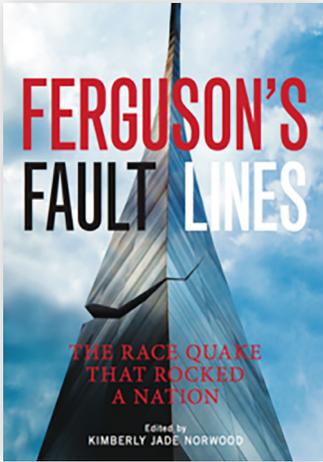
Similarly, viewers hoping for a social exploration of Florida's self-defense doctrine or the dynamic of race-relations in American culture right now, will be disappointed. *3½ Minutes, Ten Bullets* is not some grand exposé (unlike *A Most American Way to Die*, the April 25, 2013 *Rolling Stone* article that inspired the film). Rather, it is the telling of a tragic story that forces us to recognize, recall, and respect the issues of racial bias, access to guns, and justifiable homicide. Davis's father, Ron, tells us he received a text message from Martin's father welcoming him "to a club that none of us want to be in." That moment takes the viewer to the memory of Martin's death, the trial of George Zimmerman, and the protests across the United States calling for justice. As Lucy, Davis's mother, tells us, "Justice and change will only happen in changing a man's heart. If you don't change the heart of a man, there is no change."

Silver successfully invites us to change our hearts. The nature and destructive force of Dunn's bias, whether it originated implicitly or explicitly, challenges viewers to make ourselves aware of what is happening in us and around us. Seventeen-year-old children should not die because we are afraid to challenge what we or our neighbors believe about the worth and dignity of some members of our community. And at the very least, children should not die at the hands of adults who are capable of retreating. Judge Russell L. Healey, who presided over the trial of Dunn, notes in the end, "There is nothing wrong with retreating or de-escalating a situation." One could say, *3½ Minutes, Ten Bullets* particularly invites those states with laws that do not impose a duty to retreat on the individual to examine what populations *Stand Your Ground* laws protect.

Right now, Minnesota is engaged in its own conversation about several of these issues in the aftermath of the death of Jamar Clark. Surely, many members of our community will associate the losses of these two young men. But in a way, the travesty of Davis's death strikes a purer and clearer chord in the conversation of race relations. It is almost impossible to believe we live in a society where a middle-aged white man could stop at a popular gas station on a busy corner in a safe neighborhood in the early evening, and fire on black teenagers in a neighboring vehicle without a thought about options or consequences. But the film forces us to recognize not only is it possible, but it happens.

What can surely be gained from the subject of this documentary, despite such tragedy, is hope. Dunn was—eventually—after two trials, convicted of all four counts. He is serving a life sentence plus 90 years for the death of Davis and the attempted murders of each of his three friends in the truck. As Judge Healey said at sentencing, "Our justice system works. This case demonstrates that our justice system does work."

While the film may not satisfy many attorneys' hunger for true-crime drama, it certainly demonstrates what we work toward, and what may seem at times to be so fleeting—justice. As we continue the conversations we have at our work, at our dinner table, and amongst our family and friends, perhaps we can share the story Silver shared with us. Perhaps we can honor the empty, cruel, and tragic stories with stories of hope, and let that carry us toward changed hearts and a changed world.



**Ferguson's Fault Lines**  
*The Race Quake That Rocked a Nation*

ABA Publishing  
 Edited by Kimberly Jade Norwood

Review by Gloria Stamps-Smith

When I was asked to review this book I did not know what to expect, after all, much has been said about the events in Ferguson, Missouri. This book is not a light summer read; it will leave the reader feeling uncomfortable. It is a candid analysis of the ugly truth of the intersection of race and poverty in America.

The text includes a thorough examination of the small town of Ferguson, which became the epicenter of unrest following the shooting death of Michael Brown, an 18-year-old African American male, by a white police officer, Darrin Wilson. This book walks the reader step by step through the historical circumstances that lead up to the fatal shooting on August 9, 2014. The book uses historical examples to tie together the multiple factors that sparked the shooting of Brown and the ensuing unrest in the city. While the book focuses on the St. Louis area, the issues of racial division are deeply rooted across the country.

One reason the book cites for the hostile environment is the push of African Americans from the city of St. Louis into the suburbs. It examines the economic decline and disparity in wealth between African Americans and Caucasians, which facilitated a decline in the area's tax base for the local government. Without an adequate tax base, the coffers of local government were filled by court costs and fines. This economic dependency of local government on the disproportional prosecution of African Americans further fueled the lack of trust between the residents of Ferguson and law enforcement. One writer noted, "What happened in Ferguson

was not the surprise, the surprise was that it took so long. The death of Michael Brown may have struck the match in Ferguson, but it was the conditions of sustained localized inequality, segregation and discrimination that created a perfect storm waiting for the right conditions."

*Ferguson Fault Lines* also provides a comprehensive look at the failed policies that caused the school system in Ferguson to be ineffective and negligent. It opined that the schools suffer from lack of funding, overcrowding, and underperformance, like so many urban schools. It questions why any school system that performed so woefully to educate its students remains accredited.

The book examines the path of Michael Brown, and other children like him who experienced a problematic school district. Not only did it not foster academic proficiency, its authorities often refused to correct those disparities. They also, at times, furthered the dysfunction.

The book illustrates how Ferguson operated under a system of mercenary municipal laws that allowed police officers subjective discretion in enforcement of vague laws. One example noted in the book was the authority to issue a citation for "the manner of walk." Michael Brown was stopped because of a law that gave Wilson power to stop Brown for the manner in which he walked. These laws are a direct result of the local government's need to generate revenue.

That need, and subsequent enforcement of petty crimes, had a significant impact on the lives of African American in Ferguson. One criticism of this type of system is that local officials rarely consider the system's impact on its communities when fiscal needs are at risk.

The historical perspectives presented helps educate the reader about how post-reconstruction laws at the end of slavery, in the form of Black Codes and revenue generating petty crimes, continue to exist in one form or another, and are enforced disproportionately on African Americans.

The reader is able to conclude that from the moment Michael Brown was born, there were substantial obstacles that would impact his life at every turn in the form of inferior education, limited employment opportunities, and sub-standard housing options. There is an 18-year life-expectancy gap between the larger poor African American community in the northern part of St. Louis and, the affluent, mostly Caucasian communities in Clayton county, a mere 10 miles away.

*Ferguson Fault Lines* pushes the question that we as a country fail to answer; when will race not matter?

*Looking for the right bank  
 for your law firm?*

Stonebridge Bank specializes in working with all law firms from small start ups to larger established firms.

And Stonebridge Bank is the only bank in the Twin Cities that is a Prime Partner.



Prime Partner banks have agreed to pay a higher interest rate on IOLTA accounts

— at least 0.5% higher —

than what is required by the Minnesota Rules of Professional Conduct.  
 This extra revenue directly helps fund Minnesota's civil legal aid providers.



Please contact: John Uremovich 612-238-4810  
 juremovich@stonebridgebank.biz

Neesha M. Neumann 612-238-4804  
 nneumann@stonebridgebank.biz

# Classifieds

## Classified Advertising:

**Member Rates:** \$1.00 per word.

Minimum charge of \$45 for all ads.

**Nonmember rates:** \$1.25 per word.

Minimum charge of \$45 for all ads.

To place a classified, contact  
Nick Hansen at [nick@hcba.org](mailto:nick@hcba.org).

## Publication Deadline:

**September Issue:**

August 10, 2016

**November Issue:**

October 10, 2016

Includes placement on the HCBA website (for 60 days) and in the Hennepin Lawyer publication.

### FINANCIAL INSTITUTIONS ASSOCIATE, MINNEAPOLIS OFFICE

Lindquist & Venum LLP

[jnaegele@lindquist.com](mailto:jnaegele@lindquist.com)

A large downtown Minneapolis law firm, has an opening for a Chief Business Development Officer. The Chief Business Development Officer will develop and lead business development strategies to grow Lindquist's client base positioning the firm as an influential thought leader and the law firm of choice for diverse clients in the firm's core practice areas. **JOB RESPONSIBILITIES:** Initiate, develop, and manage client

retention and growth strategies, and cross-selling opportunities between practice groups for corporate and litigation attorneys in Minneapolis, Denver and Sioux Falls. • Establish and manage client teams to develop new business opportunities with existing and potential clients. • Identify client and prospect-rich environments in both legal and industry contexts. Partner with attorneys to develop event strategies in order to bring added value to current clients, attract new clients and illustrate expertise and knowledge. • Provide thought leadership, strategy, research, RFP responses, and marketing positioning programs such as advertising,

events, and sponsorships. • Provide strategic guidance and proactive recommendations to enhance the visibility of the attorneys and the firm in local, regional, national and industry platforms. • Lead business development and marketing team members and manage the department's day-to-day activities and workflow. • Actively collaborate with firm leadership, including management committee and practice group council. • Participate directly in pitches and RFPs; assist with key decisions (strategy, positioning, etc.), shepherd proposals through the firm, and engage attorneys and staff as appropriate. Heavy involvement in writing proposal content, and tracking and measuring returns on investment. • Provide competitive intelligence and analysis of potential marketing strategies and business development targets. • Track success of individual attorneys, practice groups, and law firm business development strategies to determine effectiveness, proactively providing detailed and accurate reports to leadership. • Regularly meet with practice group leaders on the state of the practice. • Develop and manage

annual business development and marketing budget. Monitor expenses against budget and track returns on investment. • Train attorneys on techniques targeted to achieve business development goals. • Continue to develop and manage the firm's business development coaching program. • Provide oversight on the firm's advertising, communication, social media and public relations efforts. • Other duties as assigned in relation to the Chief Business Development Officer position. **KNOWLEDGE, SKILLS AND ABILITIES REQUIRED:** Bachelor's degree in marketing, sales, communications, business or related field. • At least 10 years of business development experience in sales required; law firm or professional services experience preferred. • Proven track record in developing and administering successful business development programs. • Strategic thinker with strong leadership skills and personal authority. • Ability to motivate and manage attorneys and staff; strong professional, independent thinking skills with the ability to anticipate and solve problems as they arise, and implement effective conflict resolution. • Enthusiasm to perform to the highest level. Passionate about pitching innovative ideas to leadership and executing on those ideas with precision. • Creativity

### WHO WE ARE:

We provide the most secure on-site document shredding and recycling services available in America.

### WHAT WE OFFER:

On-Site Document Shredding  
Customized Shredding  
Program Hard Drive Destruction  
E-Media Destruction

Mention this Ad for a 10% discount

 (952) 777-4876

[www.proshred.com/Minnesota](http://www.proshred.com/Minnesota)



and strong writing skills required. • Advanced project management skills; attention to deadlines and experience in moving teams forward in project execution. • Strong market awareness for all firm's locations and willingness to travel, develop relationships in other markets with outside business development resources as well as legal industry colleagues. • High level of customer service and interpersonal skills necessary to communicate with a diverse group of individuals at all levels in the firm. • Proficient in Microsoft Office programs and reporting tools (Outlook, Word, and Excel). • Must be able to speak English proficiently. L&V offers a professional work environment and a competitive salary and benefits package. Please submit cover letter, resume, and salary history by email to [staffrecruiter@lindquist.com](mailto:staffrecruiter@lindquist.com). An EEO/AA Employer. No agency emails or phone calls please.

### ASSOCIATE, INTELLECTUAL PROPERTY LITIGATION

Robins Kaplan

[www.robinskaplan.com](http://www.robinskaplan.com)

We seek an associate to join our Intellectual Property Litigation practice. Qualified candidates will have strong academic credentials and two to five years of complex litigation experience in intellectual property cases. A bachelor's degree in engineering or the sciences is helpful, strong research and writing skills are required, along with a demonstrated desire to be a trial lawyer. Apply if you would like to practice law in an environment where new challenges and growth are approached with energy, enthusiasm and team work, where you work directly with clients and where your efforts are appropriately rewarded with competitive compensation and benefits. Applicants must be admitted, or eligible to become admitted, to practice in Minnesota. Applicants can apply online at the career section of our website: <http://www.robinskaplan.com/careers/associates>. Robins Kaplan LLP is an equal opportunity employer committed to building a diverse workforce.

### LAWYER

O'Meara Leer Wagner & Kohl  
[SPOMeara@OLWKlaw.com](mailto:SPOMeara@OLWKlaw.com)

Growing top AV rated Twin Cities civil litigation law firm is looking for dynamic client focused lawyers with established practices. Excellent opportunity for highly motivated candidates with strong communication and business skills in a flexible setting. Please send confidential letter of interest with C.V. to: Managing Shareholder, O'Meara Leer Wagner & Kohl, P.A. 7401 Metro Blvd., Suite 600, Minneapolis, MN; e-mail: [SPOMeara@OLWKlaw.com](mailto:SPOMeara@OLWKlaw.com).

### NOTICE OF U.S. MAGISTRATE JUDGE VACANCY

The Judicial Conference of the United States has authorized the appointment of one full-time United States Magistrate Judge for the United States District Court for the District of Minnesota. The current salary of the full-time position is \$186,852 per year and the position will be located in Minneapolis or St. Paul. The term of office for a full-time magistrate judge is eight years; incumbents may be reappointed to successive terms. The full public notice, application instructions, and application form are available on the Court's website at [www.mnd.uscourts.gov](http://www.mnd.uscourts.gov). Applications must be received no later than 5:00 p.m. Central Time on Friday, July 29, 2016.

### OTHER OPPORTUNITIES

Attorney Coaching: Coach/consultant Roy S. Ginsburg provides marketing, practice management and strategic/succession planning services to individual lawyers and firms. [www.royginsburg.com](http://www.royginsburg.com), [roy@royginsburg.com](mailto:roy@royginsburg.com), (612) 812-4500.

# Member News

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

Messerli & Kramer welcomes attorney **Daniel S. Schleck** to the Corporate & Business Law Group in Minneapolis and he brings more than two decades of experience in private practice in real estate transactions, finance, and development.

Minneapolis-based law firm Nilan Johnson Lewis announces that **Carey Smith** has joined its product liability group as a paralegal.

Winthrop & Weinstine announces shareholder **Thomas H. Boyd's** election to the American Academy of Appellate Lawyers. Boyd has practiced law with Winthrop & Weinstine for over 27 years, is a member of the bar associations of Iowa, Illinois, Missouri, Minnesota, and Wisconsin, is admitted to the U.S. Supreme Court, and has practiced law in several circuits of the U.S. Court of Appeals.

Briggs & Morgan shareholder **Bob King** has been named a Fellow and inducted into the International Academy of Trial Lawyers (IATL). Fellowship in the IATL is capped at 500 attorneys under the age of 70, limiting the title to attorneys who have achieved a career of excellence.

Arthur, Chapman, Kettering, Smetak & Pikala welcomes attorney **Emily A. LaCourse**, paralegal/investigator **Stephanie A. Meierhofer**, and paralegal Patricia A. Jones.

Moss & Barnett announces that **Charles E. Jones** has joined the firm's litigation and accountant law teams.

Fredrikson & Byron announces that employment attorneys **Kendra Hanson** and **Ashley Thronson** have joined the firm as associates. Corporate attorney **Patrick Seul** has joined the firm as a senior associate in the Mergers & Acquisitions, Private Equity, Corporate Governance and Securities groups.

The Twin Cities law firm of Bassford Remele announces that **Bryan R. Browning** has been elected president of the Minnesota Hispanic Bar Association. Bryan has been involved with the Minnesota Hispanic Bar Association for many years.

International law firm Dorsey & Whitney announced that senior partner **Steven C. Nelson** has returned to the firm's Minneapolis office after 16 years as head of the firm's Hong Kong office.

The Richard S. Arnold Award for Distinguished Service and Lifetime Achievement was recently awarded by the Association of the Bar for the United States Court of Appeals for the Eighth Circuit to **Thomas F. Nelson**. Nelson is a partner at Stinson Leonard Street and a graduate of the University of Connecticut Law School. Nelson also previously served as president of the Hennepin County Bar Association.

Yost & Baill announced that **Michelle D. Hurley** and **Anamarie Reyes Kolden** are now partners with the Firm.

**Kelly Keegan** was promoted to partner at Brandt Criminal Defense.

Trepanier MacGillis Battina announced the addition of two new attorneys. **V. John Ella** has joined as a Shareholder and **Carolyn E. Guy** has joined as senior counsel.

Commercial real estate law firm **Hope Law** has been awarded national certification from the Women's Business Development Center, a regional certifying partner of the Women's Business Enterprise National Council.

Fredrikson & Byron shareholder **Barbara Müller** was appointed Honorary Consul of Germany. In this role she is tasked to promote cooperation between the Federal Republic of Germany and the United States regarding economic relations, traffic, culture and the administration of justice, and to provide Germans and German legal entities advice and assistance in accordance with her faithful discretion.

The law firm **Jones Day** announced that the Firm has opened an office in Minneapolis.

**Kevin Schaeckel** joined McGrann Shea Carnival Straughn & Lamb, as an associate attorney practicing in the areas of commercial real estate and corporate law.

Attorney **Sally Silk** has joined JUX Law Firm.

**Jeffrey D. Gram** has joined the law firm of Henson Efron as an associate practicing in the area of Estate Planning, Trust, and Probate.

Faegre Baker Daniels announces that **Deborah Mackay** has rejoined the construction law team as counsel, **Marquita Davis** has joined the firm's corporate team as an associate, and that **Michelle Tessier** has joined the firm's product liability team as an associate.

**Christopher Morris** has been elected chief financial officer of Bassford Remele. Morris also previously served as president of the Hennepin County Bar Association.

Fredrikson & Byron shareholder **James L. Baillie** was selected to receive the Volunteer Lawyers Network's 2016 John D. Levine Distinguished Service Award. The award is presented each year to a volunteer who has provided years of service exemplifying the spirit of pro bono legal services and access to justice for those in poverty.

**Bradley R. Prowant** has joined Larson • King as an associate and will focus his practice on business litigation, financial services litigation, insurance, and labor and employment.

# Great Bites, in Brief

Welcome to our feature dedicated to helping you find the best eateries for every part of your day.

## What is the best restaurant for gluten-free food?

While celiac sufferers (like myself) are still going to find eating out a challenge, the availability, and tastiness of gluten-free cuisine, as well as a restaurant's flexibility in adjusting items, has improved dramatically in recent years. I am a big fan of some local pizza options. I particularly like the breadsticks and pizza at **Biaggis Ristorante Italiano**. The crust is particularly tasty and crisps up very nicely. **Blaze Pizza** has a great thin crust made to order (just ask them to cook it a little longer to get the bottom crispier because they fire it up on a silicone-like mat). The crust on the gluten free pizza at **Hello Pizza** in Edina is a little thicker, but it is airy and has a nice amount of crispness throughout. So while you are never going to get the chewiness of regular pizza, all these restaurants offer above-average pies that are worth the trip.

## What is your favorite place to go for a special occasion?

While there are plenty of great restaurants for a special night out, there is nothing better in the summer than an intimate dinner for two in the backyard. To keep things simple, grabbing takeout that works for outside eating is a must. Try the goat cheese and fruit compote with wine crackers, or one of the specialty sandwiches made with French bread, Spanish salami, fig compote and arugula from **France 44 Deli & Market**. I also love **Surdyk's Deli** on Hennepin in Minneapolis for take-home deli salads and sandwiches. (O.K., I haven't actually tried the sandwiches but my dinner companions rave!) The Thai chicken salad is one of my favorites but careful because the menu changes every so often. I love these two delis because you can purchase wine to go with your meal. Finally, **Lucia's To Go** has one of the best gluten-free cookies in town. Try their double chocolate walnut cookie. It is almost fudgy inside with a crisp outer shell.

## What is the best place for Mexican food?

My preferred restaurant for Mexican food is **Tinto Cocina + Cantina** on the corner of Lake and Bryant in Uptown. There is a great bar with high-top barrel table seating, as well as a more formal dining area. Tinto also has outdoor seating in back and along Bryant Avenue. While Tinto has offerings on the menu with influences from other Latin American countries, I have found all the food to be excellent. I especially love the *ropa vieja*, an appetizer made with richly flavored braised beef on a sweet plantain disc topped with queso fresco and pickled onion. Tinto serves their tacos on corn tortillas; they come with ample fillings and simple toppings—just the way I like them! The chicken pibil is topped with slivered almonds and cilantro; the beef barbacoa comes with radishes and peanuts; and the steak taco is covered with onions, cilantro, and limes. If you want just lettuce and cheddar cheese, look elsewhere!

For a takeout meal, visit **El Burrito Mercado** in South St. Paul. They serve all sorts of *guisados* (meat stews) made from different types of meat and vegetables in a variety of sauces. They have a cafeteria-style deli, as well as a sit-down restaurant where you can order your *guisado* as a plate (with rice, beans, and tortillas) or as a *quesadilla*.



### Lizzu Castañeda

[LCastaneda@FinancialGuide.com](mailto:LCastaneda@FinancialGuide.com)

Ms. Castañeda is an attorney and financial advisor at Tandem, a financial services firm providing advice for the discerning investor. She develops wealth accumulation strategies that build flexibility and diversity in her clients' portfolios.

# The Fund for Legal Aid and the Hennepin County Bar Association thank our May 4 Law Day Dinner contributors for protecting rights and improving lives!



Anthony Ostlund  
BAER & LOUWAGIE

BRIGGS  
BRIGGS AND MORGAN  
PROFESSIONAL ASSOCIATION

DORSEY™  
always ahead

FAEGRE BAKER  
DANIELS

Fox Rothschild LLP  
ATTORNEYS AT LAW

Fredrikson  
& BYRON, P.A.

GRAY  
PLANT  
MOOTY 1500

GUSTAFSON  
LUEK PLLC

Hogan  
Lovells

LINDQUIST

ROBINS / KAPLAN LLP

SLW SCHWEGMAN  
LUNDBERG • WOESSNER

STINSON  
LEONARD  
STREET

THOMSON REUTERS™

usbank

BASSFORD REMELE

## Premier Underwriters (\$12,500)

Anthony Ostlund Baer & Louwagie P.A.  
Briggs and Morgan, P.A.  
Dorsey & Whitney LLP  
Faegre Baker Daniels LLP  
Fox Rothschild LLP  
Fredrikson & Byron, P.A.  
Gray Plant Mooty  
Gustafson Gluek PLLC  
Hogan Lovells US LLP  
Lindquist & Vennum LLP  
Robins Kaplan LLP  
Stinson Leonard Street LLP  
Thomson Reuters  
U.S. Bank

## Underwriters (\$10,000)

Bassford Remele, P.A.  
Schwegman Lundberg Woessner

## Premier Partners (\$6,000)

Wells Fargo & Company

## Partners (\$5,000)

Mitchell Hamline School of Law  
Moss & Barnett,  
A Professional Association  
Nilan Johnson Lewis  
Twin Cities Business  
UnitedHealthcare

## Promoters (\$2,500)

Anonymous  
3M  
Barnes & Thornburg LLP  
Best Buy Co., Inc.  
Cargill Law  
Carlson

Carlson, Caspers, Vandenburg,  
Lindquist & Schuman, P.A.  
Conlin Law Firm LLC  
DLA Piper LLP  
Dykema  
Felhaber, Larson, Fenlon & Vogt, P.A.  
Foley & Mansfield Charitable  
Foundation  
Fruth, Jamison & Elsass, PLLC  
Gaskins, Bennett, Birrell, Schupp LLP  
Greene Espel PLLP  
Halunen Law  
Hellmuth & Johnson PLLC  
Henson & Efron, P.A.  
Hinshaw & Culbertson LLP  
Andrea Kaufman and Jim Jacobson  
Larkin Hoffman Daly & Lindgren Ltd.  
Lockridge Grindal Nauen P.L.L.P.  
Lommen Abdo, P.A.  
Maslon LLP  
Meagher & Geer, P.L.L.P.  
Medica  
Medtronic, Inc.  
Merchant & Gould P.C.  
Minnesota Appellate Judges  
Minnesota Lawyers Mutual Insurance  
Company  
Morrison Sund PLLC  
Kathleen M. Newman + Associates, P.A./  
CBIZ MHM, LLC  
Nichols Kaster, PLLP  
Pauly, DeVries Smith & Deffner, L.L.C.  
Schechter Dokken Kanter CPAs  
Siegel Brill P.A.  
Target Corporation Law Department  
University of Minnesota Law School  
Faculty and Administrators  
University of St. Thomas Law Faculty

WILLIS TOWERS WATSON  
Winthrop & Weinstine, P.A.  
Zelle LLP  
Zimmerman Reed, PLLP

## Patrons (\$800)

Anonymous  
Steven Kalin/Ken Sherman/  
James Cargill  
Aafedt, Forde, Gray, Monson &  
Hager, P.A.  
Arthur, Chapman, Kettering, Smetak  
& Pikala, P.A.  
Baillon Thome Jozwiak & Wanta LLP  
Barna, Guzy & Steffen, Ltd.  
Best & Flanagan LLP  
Chestnut Cambronne PA  
Cousineau McGuire Chartered  
Dady & Gardner, P.A.  
DeWitt Ross & Stevens S.C.  
Eckland & Blando LLP  
Fafinski Mark & Johnson, P.A.  
Gregerson, Rosow, Johnson &  
Nilan, Ltd.  
Laurie Hanson and Kim Dayton  
Harrington Langer & Associates  
Haukedahl Financial Services  
Hessian & McKasy P.A.  
Kennedy & Graven, Chartered  
Lapp, Libra, Thomson, Stoebner &  
Pusch, Chartered  
Lind, Jensen, Sullivan & Peterson,  
A Professional Association

Mackenzie Law Office  
Meyer & Njus P.A.  
Patterson Thuente Pedersen, P.A.  
Piper Jaffray Companies  
Ravich Meyer Kirkman McGrath  
Nauman & Tansey, P.A.  
Robert Half Legal  
SiebenCarey  
Soule & Stull LLC  
TCF National Bank Legal Department  
Tewksbury & Kerfeld, P.A.  
Minnesota Twins Baseball Club  
John R. Wald and  
Marianne T. Remedios  
Walling Berg & Debele P.A.  
Barbara Y. Welke and William R. Welke  
Zamansky Professional Association

## Ticket Purchasers (\$200+)

## Vendor Sponsors (\$5,000)

Attorney at Law Magazine  
Rust Consulting/Kinsella Media

## (\$2,500)

Christensen Group  
Epiq  
Financial Advisors LLC  
Kurtzman Carlson Consultants

www.mylegalaid.org 612.746.3709





# Annual Meeting and Awards Luncheon 2016



## CREATING CONNECTIONS



## HCBA SUMMER MEMBERSHIP SOCIAL 2016



# 2016 TEE IT UP FOR JUSTICE



*Burl Oaks Golf Club  
Monday, August 8  
5400 North Arm Drive  
Minnetrista, MN 55364*

## Reserve Your Spot Early. Guarantee Your Place!

Registration includes: green fees, golf cart, cookout lunch, and buffet dinner.

*A Perfect Day to Spend with Colleagues and Clients. Awards & Prizes Aplenty. Join the Fun!*

### MONDAY, AUGUST 8

BURL OAKS GOLF CLUB  
5400 NORTH ARM DRIVE  
MINNETRISTA, MN 55364

**11:00 AM: REGISTRATION & BUFFET LUNCH**  
**12:00 PM: SHOTGUN START**  
**5:30 PM: AWARDS DINNER & PRIZES**

Proceeds from this event benefit the Hennepin County Bar Foundation—the charitable giving arm of the Hennepin County Bar Association. Since 1968, HCBF has made a positive impact on the community by funding over \$2.5 million in grants to nonprofit legal organizations that reinforces our mission “Promoting Equal Access to Justice for the People of Hennepin County.”

[Register at www.hcba.org](http://www.hcba.org)

Call Ron Osterbauer at 612-752-6614 regarding sponsorship opportunities or to register/pay by phone.

**EARLY BIRD REGISTRATION: \$185 per golfer**

(Payment must be received by Friday, July 8)

**\$200 per golfer** (after Friday, July 8)

*Please note: This tournament is an all scramble format.*

*Golf registration above \$120 is a tax deductible contribution to HCBF.*

+\$40 per team. Bernie Zimpfer Memorial Cup Challenge

+\$25 Players Card Per Person **NEW**

### PLAYERS CARD *Includes All*

**\$25**

- › 2 Mulligans
- › Closer Shot: Tee off at yellow tee at one predetermined hole.
- › Chipping Contest: Chip to try and land in boat on pond.
- › Putting Contest
- › Bunker Toss: One toss out of any bunker per round.

**In 2016 your Hennepin Bar Foundation granted \$120,000 to 16 justice related nonprofits. Your support provided grants to the following:**

Children’s Law Center of Minnesota  
 Conflict Resolution Center  
 Council on American-Islamic Relations  
 Battered Woman’s Legal Advocacy Project  
 Division of Indian Work  
 Lawyers Concerned for Lawyers  
 LegalCORPS  
 Legal Rights Center

Minnesota AIDS Project  
 Minnesota Assistance Council for Veterans  
 Minnesota Justice Foundation  
 Operation DeNovo  
 Peace and Hope International  
 Seward Longfellow Restorative Justice Partnership  
 Sojourner Project  
 Volunteer Lawyers Network

HENNEPIN COUNTY BAR ASSOCIATION  
600 NICOLLET MALL SUITE 390  
MINNEAPOLIS, MINNESOTA 55402  
612-752-6600  
www.hcba.org

CHANGE SERVICE REQUESTED

PRSR STD  
U.S. POSTAGE  
PAID  
TWIN CITIES, MN  
PERMIT NO. 90027



**FIGHTING**  
FOR THE  
**LITTLE GUY**

**SOME CORPORATIONS THINK THEY ARE TOO BIG TO PLAY FAIR.** We disagree. We fight for the rights of employees and consumers in individual cases and class actions.

Contract or severance negotiations, discrimination, unfair pay, or consumer protection, we have the experience and resources to fight for the little guy.



**EMPLOYEE & CONSUMER RIGHTS**

4600 IDS Center | 80 South Eighth Street | Minneapolis, MN 55402 | [NKA.COM](http://NKA.COM) | 612.256.3200