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Bar Talk

President's Welcome Message:

by Vildan Teske



I want to welcome all of you to our 2020-2021 bar year, which begins on September 1st. I am honored and privileged to serve as the President of the Federal Bar Association's

Minnesota Chapter this year. Many thanks to Immediate Past-President, the Honorable Tony N. Leung, for his exemplary leadership and to outgoing officers, committee co-chairs, and board members for their generosity of time and talents.

Before I talk about the fantastic work our Chapter does each year and all that it offers our membership, I want to take a moment to recognize the difficulties with which we, as individuals and as a greater community, have grappled in the last five months. Remote working and social distancing have become part of our everyday conversations. As our country faces the daily reality of the COVID-19 pandemic, we are also confronting the events of this summer, which highlight the urgent need to continue the work on racial equity and our founding principle of equal justice under the law. These times are difficult, but they also present us, as legal professionals and a bar association, with opportunities to do even more for our community and each other. The Minnesota Chapter is here for our members and ready to meet this challenge.

Since 1995 when I became a member, the FBA has been the source of meaningful time spent with colleagues, of learning at seminars and programs, listening to inspiring and thought-provoking speakers, of opportunities

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Diversity and Inclusion Committee Hosts Three Important Events

By Chad Pennington

In early August, the FBA Diversity Committee co-sponsored three events offered by the World Without Genocide. These three events provided FBA members with an invaluable opportunity to participate in a discussion on how past genocides happened and strategies and potential solutions to ensure genocide is a thing of the past. Specifically:

On August 4, the FBA Diversity and Inclusion Committee hosted a webinar entitled "Statelessness: From the Holocaust to Today," featuring Holocaust survivors Fred Amran and Manny Gabler. The webinar examined the connection between statelessness today and Nazi persecution during WWII.

On August 5, the FBA Diversity and Inclusion Committed hosted a webinar "The Legacy of the Genocide of the American Indians." This program addressed the systemic injustices faced by American Indians because of the legacy of intergenerational genocidal trauma. The speakers were Minnesota Supreme Court Justice Anne McKeig, Minnesota Representative Mary Kunesh-Podein, and FBI Special Agent Robert Perry.

On August 6, the FBA Diversity and Inclusion Committee hosted a webinar entitled "From Protest to Justice, Retribution, Restitution, and Change." This program examined the recent

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for leadership roles and making an impact in our community, and perhaps most importantly, of building lasting friendships. Simply put, the FBA, in many ways, has been my professional home. I know that many of you feel the same way about our Chapter as I do.

If you're a newer member or have not yet had the opportunity or time to get engaged, I invite you to do so now. I promise you'll be glad you did. I urge you to find a committee or practice group of interest and get involved. Please reach out to me or any of our committee co-chairs or officers - we will find a place for you to get involved. Everyone is welcome. Our Chapter offers a myriad of ways you can make an impact within our legal community and beyond, work on the critical issues of our time, enhance your practice through legal education and seminars, and meet other federal practitioners.

We enjoy tremendous collegiality among the bench and bar. It is perhaps one of the most important hallmarks of our Chapter: longstanding involvement and support of our activities by our federal judges. For this, we are immensely grateful. Many of our past-presidents and officers have been members of the judiciary. Their thought-leadership and perspectives have been invaluable to the work of the Chapter.

The Minnesota Chapter is the second largest, and likely the busiest, FBA chapter in the country. We have 16 hard-working committees and practice groups which create all of our fantastic programming, engage and serve our community, and handle communications with our membership. We also collaborate extensively with our local affinity bar associations and the three Minnesota law schools. Although unfortunately, our events can't be in person for the time being, we have much in store. Our co-chairs are thinking creatively and looking for ways to fulfill the mission of our Chapter during the unusual time in which we find ourselves.

Our Monthly Luncheon series will go virtual this Fall. We may not be able to sit across the table from each other and break bread, but we will have exciting topics and speakers, and opportunities for virtual small group networking before each event. Please join us. These virtual lunchtime CLEs will be free of charge to our members.

The Diversity and Inclusion Committee has several excellent virtual programs slated for September and October on very timely topics. The committee also has subcommittees coordinating mentorship programs for law students and those new to our profession, as well as working on important diversity pipeline issues. To help increase the number of law students from underrepresented groups, last year, I initiated a project to explore starting an LSAT scholarship program. I worked with the D&I Committee Co-Chairs, the Diversity Pipeline Subcommittee Co-Chairs, and representatives from each of our local law school admission offices. In partnership with Kaplan Test Prep, which generously provided deeply discounted fees for their courses, we conducted the pilot program to award these scholarships to two students through each of the three

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protests over the murder of George Floyd in the context of systemic racism. Panelists included Senior Judge Edward Wilson, former Minnesota Human Rights Commissioner Kevin Lindsey, Minnesota National Guard Lieutenant Colonel Sam Andrews, and former state human rights director Jessi Kingston.

The Statelessness discussion focused on the many reasons a person may be stateless including:

- A country's leadership may revoke citizenship for a vulnerable group, known as *de jure* statelessness, brought about by the enactment of law.
- People may become stateless through war and displacement and a loss of documentation or an inability to register new births, known as *de facto* statelessness, arising from various circumstances.
- A country's status may change, leaving its former citizens without nationality.

The discussion also focused on statelessness as a critical challenge during the pandemic because of difficulties encountered by people with no nationality in accessing health care. The United Nations has issued a plea to all nations to recognize this crisis and to provide equal and necessary care to all people, regardless of citizenship. Overall, there are an estimated ten million stateless persons in the world today, some in every country, including the United States. At least 3,000,000 of these stateless persons are children.

The Legacy of Genocide discussion focused on the challenges that remain as a consequence of the historical victimization of American Indians. Some of the salient facts include:

- American Indians have the highest poverty rate of any major group in the country.
- American Indian women experience greater rates of rape and sexual assault than any other group. It is es-

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The Infinity Project: A Sustained Judicial Diversity Mission

by Irene Kao

Along with the rest of the nation and world, we mourn the killing of George Floyd, which has brought long-overdue global attention to racial bias in the criminal justice system. We join his family and many others in calling for justice. In this time of reflection, it is apparent that part of justice is ensuring all voices are included in decision-making. That includes race and gender diversity in our courts.

The timing for this reflection on change is appropriate as we commemorate this year the 100th anniversary of the 19th Amendment: an achievement of a great human rights struggle that recognized women as an equal part of political society.

As in all civil rights advances in America, the promises of the 14th and 19th amendments must be tended and supported. As Professor Sally E. Kenney recently wrote, "We need a *sustained* political movement to focus attention on courts."* Women, people of color, and other diverse candidates may have the right to vote, practice law, run for office, and ascend to state and federal benches, but having rights does not mean having true opportunity.

The Infinity Project is working to deliver on the promise of meaningful engagement by supporting and expanding the presence of women and people of color on the bench in the 8th Circuit and in state courts.

Continued Need for and Relevance of the Infinity Project Mission

The Infinity Project was founded in 2007 by four Minnesota women attorney leaders: Judge Mary Vasaly and Professors Marie Failinger, Lisa Brabbit, and Sally Kenney. Since then, we have advocated for increased opportunities for women – especially women of color – to become judges and supported their pursuit of those positions. The need for this work is underscored in the composition of the 8th Circuit Court of Appeals, where there is currently only one female judge and one male judge of color.

We believe the judicial selection process, like the judicial decision-making process, must not only be fair, but must be seen as fair. Women and other underrepresented groups must be welcomed into and encouraged to be part of the judicial system, to fight against the perception of systemic unfairness. Unfortunately in the 8th Circuit, the actual lack of diversity and inclusion, as well as the appearance of exclusion, undermine trust in and the legitimacy of the judicial branch. The process is as important as the outcome.

We applaud the Minnesota Commission on Judicial Selection for working hard to urge qualified, diverse candidates

* Kenney, Sally J., "Measuring Women's Empowerment as Part of Political Empowerment, in Measuring Women's Political Empowerment Across the Globe", Alexander, Bolzendahl and Jalalzai, eds. 2020.

to apply for judicial positions, in partnership with the Infinity Project, the affinity bars, and other stakeholders.

We also applaud the Minnesota legislature and then-Governor Al Quie for enacting into law a requirement to collect gender and race demographics in judicial applications and nominations. Minnesota is the only state in the 8th Circuit with this statutory requirement, which facilitates the transparency that is imperative to help the public know whether judicial candidates represent the diverse communities of Minnesota.

But there is much work that still needs to be done, so here's what the Infinity Project is doing to help recruit and prepare qualified, diverse candidates.

Collaborative Judicial Bootcamp

The Infinity Project recognizes that increasing gender and other diversity on the bench depends on having a diverse group of applicants. Those who have been excluded or marginalized often question their ability to be a judge and if they will "fit in." The Judicial Bootcamp serves as one solution to this dilemma by providing comprehensive and strategic coaching, mentoring, and training for women and candidates of color. The first step is to level the playing field by expanding the roster of diverse candidates.

Judicial Bootcamps have thus far occurred in Minnesota, Iowa and North Dakota. The Bootcamp consists of half-day sessions with three separate tracks designed for lawyers with different levels of legal experience and for sitting judges who may wish to move onto appellate or federal courts. Aspirants receive mentoring and coaching from decision-makers, state and/or federal judges, and others who have experience in the judicial selection process.

While there is much value in the substantive information shared at these Bootcamps, the process in planning the events is as important as the outcome – just as in the judicial selection process. It is crucial that they are developed in collaboration with local affinity and district bars. Working with other bars expands our collective networks to expand the potential pool of judicial applicants, moving beyond who we have in our personal networks. Another vital aspect for success is that attendees are personally invited to these Bootcamps. This outreach is particularly important for lawyers from underrepresented groups who otherwise may not consider applying. Receiving this kind of encouragement often makes a difference to women and lawyers of color who may feel the process is unwelcoming. After the Bootcamp, judicial candidates are matched with mentors.

The Lynchings in Duluth with Michael Fedo and William D. Green

By the Bar Talk Staff

Long ago, James Baldwin wrote: "Not everything that is faced can be changed. But nothing can be changed until it is faced." During a June 10, 2020, Facebook Live discussion hosted by the Minnesota Historical Society, author Michael Fedo and Augsburg Professor William Green faced the lynching of three black men that took place 100 years earlier in Duluth, Minnesota.

On June 14, 1920, thirteen black men were arrested for a rape that never happened. The following evening, a white mob of between 1,000 and 10,000 people broke into the jail where the black men were held, ripped three of them from their cells, beat them and dragged them a block away to be hanged from a lamp post. The Duluth police did not attempt to stop the mob.

In 1973, Mr. Fedo tried to research the Duluth lynchings and found that there were no books documenting the lynchings, nor was there any other historical documentation of the Duluth lynchings. It was like the events had been wiped from the pages of history. Mr. Fedo tried to bring the horrific events to light in 1979 with the publication of the first edition of his book *The Lynchings in Duluth*. The first edition of his book was criticized as attempting "to rub our noses in this unseemly event all over again." Even today—41 years after publication of the first edition of his book—the majority of Minnesotans are unaware that the events occurred.

This discussion, which before the pandemic was scheduled as part of a larger series of events to remember the lynchings, attempts to bring awareness to these horrific events of a century ago.

After the lynchings, one black man named Max Mason was convicted for rape and served five years in prison. Mr. Fedo noted that at the time, many white people in northern Minnesota felt that Mr. Mason's conviction justified the lynchings. However, Mr. Mason was posthumously pardoned nearly 100 years after the lynchings because there was no evidence supporting the conviction. This was the first posthumous pardon in Minnesota history.

The year after the lynchings, Minnesota passed anti-lynching legislation. Mr. Fedo and Dr. Green noted that the legislation passed almost unanimously. To this day, there is not a federal anti-lynching statute.

The one hundredth anniversary of the lynchings coincided with the murder of George Floyd, which occurred on May 25, 2020 in Minneapolis. Mr. Fedo and Dr. Green discussed the history of systemic racism in America in light of the lynchings and the more recent murder. Mr. Fedo and Dr. Green said they see some signs of hope for progress in America's race relations, as illustrated by the outcry and demonstrations that followed George Floyd's death. ■



FBA National Diversity & Inclusion Committee hosts first of two panel discussions on law enforcement liability

Kiera Murphy

Note: This article was drafted after the first part of a two-part series on law enforcement liability. The first installment featured a panel of prosecutors and law-enforcement training experts, while the second part will feature a panel of expert defense attorneys.

George Floyd was a black man who died at the hands of Minneapolis police officers on Memorial Day of 2020. Widespread protests followed, with chants of "I can't breathe" reverberating in our consciences. The outrage over Mr. Floyd's death also sparked an ongoing national conversation on law enforcement training and liability. As part of that conversation, the national Federal Bar Association's Diversity & Inclusion Standing Committee organized a program to educate the legal community on use of force, racial profiling, and prosecutions of the police. The panel featured three experts on the issue: Dr. Alex Del Carmen, the Associate Dean for the Tarleton State University School of Criminology, who has trained approximately 15,000 police officers and all the Texas police chiefs on racial profiling; David Douglass, managing partner of the D.C. Sheppard Mullins' office and deputy federal monitor over the New Orleans Police Department; and Andy Luger, a former U.S. Attorney for the District of Minnesota who oversaw the federal investigation into the police shooting of Philando Castile.

The program began with several insights from Dr. Del Carmen on law enforcement training and oversight. First, he explained that the definition of use of force varies widely throughout the United States, with some police departments deeming when an officer merely removes his or her gun from its holster a use of force. The use of force training officers receive varies widely as well, with some departments analyzing how to approach different situations rather than going through physical exercises. Second, Dr. Del Carmen framed the question of racial profiling not as the motivation for a stop, but rather as the outcome of a stop. For example, if a given officer stops and searches 100 white men and 100 black men in a year but finds contraband on 50 percent of the white men versus 10 percent of the black men, the outcome of the officer's searches begs the question of whether there was racial motivation. Likewise, focusing less on the motivation for a stop could avoid the question of whether the officer had a pretextual excuse for his or her actions.

Mr. Douglass and Mr. Luger then spoke on the legal process surrounding law enforcement prosecutions. Mr. Luger first answered the question of what else had to be investigated when an encounter is video-taped. He told listeners that discerning a defendant's intent is paramount. Important evidence of a defendant's intent could be his or her statements to others in the moments just after the use of force happened. He further explained that the public's frustration with how long an investigation may take showed a not necessarily unjustified lack of trust in the criminal justice system. Mr. Douglass later discussed strategies for combatting racial bias in law enforcement prosecutions. He suggested breaking the incident down moment by moment for the jury, stressing at each point that the officer's reaction stemmed from implicit bias regarding

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timated that as many as 80% of Native women will experience violence in their lifetimes.

- American Indians experience more violent crime per capita than any other group.
- Inherited trauma persists across generations.

The discussion highlighted the many significant steps that have been taken to address these challenges. Most notably, several states, including Minnesota, have created commissions or task forces to investigate the causes of violence against American Indian and Alaska Native women. Efforts are underway to create shared databases among various entities and agencies and to create solutions for intervention and to assist survivors.

The "From Protest to Justice Event" centered on racism and avenues for change, including the courts, restitution, and city-level policies and practices. Specifically, the discussion focused on other types of justice to consider other than the standard criminal justice model:

Institutional reform refers to a guarantee for non-repetition of the system under question. Distributive justice is concerned with giving all members of society a 'fair share' of the benefits and resources available. Reparations and restitution refer to giving back what is owed or what was unjustly taken. Another form of justice comes through memorialization. Memorials can recognize efforts to move forward, to acknowledge culpability for past injustice and to bring hope for a brighter future. ■

Chad Pennington is an Assistant Federal Public Defender in the District of North Dakota. He is a member of the FBA White Collar Compliance and Criminal Law Committee and a Co-Editor of Bar Talk.

Challenges to Transgendered Rights

By Marsela Ruiz

The Minnesota Chapter of the FBA partners with the non-profit organization World Without Genocide at Mitchell Hamline School of Law by promoting programs and webinars put on by World Without Genocide. One such program was held on June 16, 2020 entitled, "Challenges to Transgender Rights-From the Nazis to the Neo-Nazis."

Dr. Ellen Kennedy gave a historical synopsis of LGBTQ rights in Europe, specifically in Germany. The term transvestite was coined by Magnus Hirschfield in 1910. Hirschfield was gay and Jewish, and founded the Institute for Sex Research. After World War I, there was a movement in Germany for LGBTQ rights. In fact, in the decade before the rise of the Nazis, Berlin was known as a progressive city, with a thriving gay scene and the sense that people had the freedom to express themselves however they wanted. While homosexuality was illegal in Germany, starting in 1908 the government began issuing "transvestite certificates" which allowed people to wear clothing that corresponded to their gender identity. By the 1920s, there were many transvestite certificates issued. Liberal Germany was beginning to be confronted with people who felt that Germany was becoming depraved, sick, Jewish and "un-German."

Within a month of the Nazis' coming to power in January 1933, all the LGBTQ nightclubs and the Hirschfield Institute were raided and shut down. Gay men and transvestites were arrested and imprisoned. The certificates issued earlier to allow the freedoms to dress as how a person identified were used against the people by the Police State. The Nazis then continued with their terror that was the impetus for World War II

Leslie Lagerstrom founded the organization Transparenthood https://transparenthood.net/about/ and spoke of the challenges that transgender people in the United States are currently facing. Ms. Lagerstrom says that the majority of people who she has encountered in Minnesota are open and accepting of transgender people. Her son Sam has endured bigotry, including by school authorities in their western suburb home district, but found a school where the teachers and administrators were honored to have Sam matriculate in their school. Likewise, Sam found a college that provided him the same rights as all students. While bigotry may always exist, the real danger is in executive actions. Transgender people do not have legal protections when it comes to housing, the workplace, or health care. Even Title IX protections for students participating in school sports are threatened. This is considered by many to be the next civil rights issue of our time. Lagerstrom says an important point for all of us to remember is that laws alone won't protect transgender people without increased public awareness, outspoken allies, and a society that values the dignity of transgender people.

When culture and society make distinctions between different types of people, there will always be divisions. It is a dangerous proposition for one group of people to attempt to dictate how the rest of humankind should feel, believe and act. What can each of us commit to doing to support transgender people, and thereby support the freedom of all individuals to express themselves how they choose?

Marsela Ruiz is a rising senior at St Paul Central High School, and was a student in the US District Court/MN-FBA's inaugural year of Court Camp. She is an essential worker at Cub Foods.

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the victim's race.

All three speakers lastly discussed several solutions to increase law enforcement accountability. Dr. Del Carmen suggested that we implement universal training and guidance on use of force, when deadly force can be used, and behavior constituting racial profiling. Mr. Douglass and Mr. Luger thought that these solutions could decrease improper use of force (thus decreasing prosecutions), create a uniform legal standard by which to measure officers' behavior, and shift law enforcement culture to one that emphasizes de-escalation techniques.

In the end, Minnesota experienced about \$500 million in property damage during the civil unrest that followed Mr. Floyd's death.¹ That amount, at the very least, is the cost of our silence. How much more will we pay before we act? ■

Kiera Murphy is an associate in the business litigation practice group at the law firm of Faegre Drinker Biddle and Reath LLP. She is a member of the MN Chapter Membership Committee and the Membership and Diversity & Inclusion Committees of the national Federal Bar Association. Kiera organized and co-moderated the program that is the subject of this article.

¹ Minnesota Governor Timothy Walz's July 2, 2020, letter to the Federal Emergency Management Agency.

Vivian Mason's Passing

By Chad Pennington

Vivian (McFerran) Mason passed away on June 18, 2020. Ms. Mason was married to Magistrate Judge John (Jack) Mason of the District of Minnesota. Ms. Mason served as a Minneapolis Park Board Commissioner and helped with the Cedar Lake Trail, Midtown Greenway, and established the Village Parks program to bring Minneapolis Public School students to the Concordia Language Villages. In addition to also serving on the board for Concordia Language Villages, she also served with Books for Africa, establishing the Jack Mason Law & Democracy initiative to provide legal texts to universities and institutions. She was the citizen member of the Board of Law Examiners and worked with the Federal Bar Association to establish the Jack Mason Memorial luncheon focused on diversity in the law. Ms. Mason will be missed.

Minnesota Chapter of the FBA Holds First Virtual Chapter Business Meeting

By Kelly Fermoyle

On July 22, 2020, the Minnesota chapter of the FBA held its first virtual chapter business meeting. The meeting was held on WebEx and was well attended by FBA members.

Chapter president Magistrate Judge Tony Leung kicked off the meeting with a welcome and an overview of the business of the chapter. Judge Leung then turned it over to Chief Judge Tunheim to give an update about the state of the district in light of the pandemic.

Chief Judge Tunheim noted that the district has been operating almost entirely virtually since March. The CARES Act permitted federal judges to hold criminal hearings by video, with the consent of the defendant in consultation with counsel. The majority of defendants have consented to these video hearings. Chief Judge Tunheim noted he has held approximately fifteen sentencing hearings over video. For defendants who decline to consent, the hearings have been put on hold. The district is working on a plan to house defendants in a special block of cells available in St. Paul in order to resume these hearings, with the special block of cells helping avoid the risk that an infected defendant could spread the disease to other inmates.

The district is also working on retrofitting one courtroom in St. Paul and one courtroom in Minneapolis to enable jury trials to resume. A second courtroom in each courthouse will be added late in the year. The district has developed a detailed set of procedures to follow for jury trials. The courtrooms have been configured with plexiglass around each litigant and each juror, as well as the judge. All attendees will be required to wear masks and face shields will be available. In addition, in a change from the district's normal practice, lawyers will be required to sit through trial. The

first jury trial was scheduled for late August before Judge Eric Tostrud. The district expects a busy fall of jury trials because many trials have been pending for months.

The judges in the district have given the oath to 1,500 new citizens since the pandemic began. All oath ceremonies have taken place outside, with only ten new citizens at a time. This format will continue until mid-October when it will likely be too cold. At that time, the district will introduce a different format.

After the Chief Judge's update on the state of the district, the chapter voted to amend the bylaws, which, among other things, permit the chapter to conduct business remotely. The motion to amend the bylaws carried. The chapter voted on the Nomination's Committee's slate of leaders and board members, a motion which also carried.

Chapter President Judge Leung then updated the chapter on recent events. Since the onset of the pandemic, seventeen Minnesota chapter FBA events have been cancelled, including the annual dinner dance, the federal practice seminar, and the annual golf tournament to name a few. Nonetheless, the chapter has carried on with many events held virtually. Judge Leung noted that the monthly luncheon committee is considering a possible outdoor event in the fall, and possible virtual replacements for the luncheons through the end of the year.

Lastly, our long rage committee has begun planning for the chapter to host a national FBA convention. The first step will be assembling a committee to create the application for the national convention, which will be the first step in a multiyear process before the chapter could host the convention in several years.

Kelly Fermoyle is an associate at Faegre Drinker Biddle and Reath, specializing in business and intellectual property litigation, and Co-Editor of Bar Talk.

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law schools. The pilot program provided a total of six scholarships to students from underrepresented groups. I am proud to announce that we will formally launch the FBA Minnesota Chapter LSAT Preparation Scholarship this winter as an annual initiative that will be housed within the D&I Committee. If your firm or organization would like to take part in this program and become one of the sponsors, please contact me.

Our other committees are also keeping very busy. The Community Outreach Committee had to cancel the third annual, week-long, Court Camp for high school students, which was a tremendous success in its first two years. We remain hopeful that the camp can be held in 2021. The committee is also planning other community service and engagement opportunities this year. The Law School Outreach Committee and the Newer Lawyers Committee provide programming and opportunities to network for law students and newer lawyers. The Membership Committee is planning its initiatives to communicate the benefits of our Chapter and grow our membership. The Bar Talk Committee publishes this award-winning newsletter that you are reading. And the Digital Communications Committee makes sure that our members know about all upcoming programs.

Our Chapter's popular Annual Federal Practice Seminar and Mason Memorial Luncheon, planned by our Legal Education Committee, was also canceled due to COVID-19. With many thanks to leaders within the FBA, our affinity bar partners, the MSBA, as well as the support of the District of Minnesota, the Seminar was going to feature the highly sought-after Brian Stevenson of the Equal Justice Initiative and author of Just Mercy as one of the distinguished speakers. This was going to happen in conjunction with an event marking the 100th anniversary of the Duluth lynchings. As with the other canceled events, we hope to be able to reschedule this for next June.

The Special Events Committee plans the Chapter's social highlight of the year- the Federal Judges Dinner Dance, which is traditionally held at the Minnikahda Country Club each May. Let's keep fingers crossed that we can take our dancing shoes out of storage by next May and enjoy the wonderful time that this event provides each year. Our Golf Tournament Committee plans the Annual Golf Tournament and Social, which takes place every August. Sadly, this summer's event also needed to be canceled. We are hopeful for next summer. Our practice groups include the Intellectual Property Practice Group, the White-Collar Crime Practice Group, and the Mass Tort, Multi-District Litigation and Class Action Practice Group. These groups are a fantastic way to get involved in a committee that focuses on substantive law in your practice area. The Chapter's award-winning ProSe Project matches volunteer lawyers with *pro se* litigants to help ease the burden on our court system that unrepresented parties present. Many of our members have provided their services pro-bono over the years. And the Grant Committee has provided grants to deserving non-profit organizations that do important work in our community.

As one can see, the Minnesota Chapter is a vibrant, committed, and engaging organization powered by the many volunteers and leaders who step up each year to create something extraordinary and unique. Thank you for contributing your talents, precious time, and your passion. If you are not yet involved, please join us. I am honored to work with every one of you to enhance our community and make the Minnesota Chapter of the FBA our professional "home."

Vildan Teske is the President of the Federal Bar Association, Minnesota Chapter. She is a partner at Teske Katz, PLLP and focuses her practice on representing individuals in complex consumer protection litigation and class actions.

Chief Judge Tunheim's Virtual COVID-19 Discussion

By Chad Pennington

COVID-19 has radically transformed the legal landscape and how and where we are litigating cases. On May 28, 2020, the FBA Minnesota White Collar Compliance and Criminal Law Committee held an important virtual discussion with Chief Judge John R. Tunheim regarding the recent COVID-19 related practice changes in the District of Minnesota. The discussion focused on the recent changes to court operations in the evolving pandemic landscape. The event was sponsored and hosted by Lathrop GPM, and moderated by Marnie Fearon of Lathrop GPM.

The discussion focused on the criminal operations of the District of Minnesota and the recent administrative orders authorized by the CARES ACT, authorizing alternative technology, such as Zoom, to safely facilitate criminal hearings. Chief Judge Tunhiem discussed the use of such alternative technologies to provide initial appearances, arraignments, and other criminal hearings such as detention hearings and preliminary hearings as a substitute for in-person hearings.

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The Infinity Project also provides potential applicants with a planning tool, entitled "My Journey to the Bench," which they can use to plot short- and long-term strategies, such as information gathering, relationship building, composing a resume, developing a story/brand, and keeping track of steps required to apply in the future.

Mock Interviews

To help prepare applicants for their appearances before judicial selection committees or nominating executives, Infinity board members conduct mock interviews so applicants can practice answering typical interview questions. We also provide feedback to enable applicants to hone their presentations. The high success rate of those who receive that mock-interview assistance, whether from the Infinity Project or other bars, demonstrates its value in understanding and preparing for that aspect of selection. Questionnaires and videos from previous candidates are available on the Infinity Project web site.

To best assist applicants, the Infinity Project actively collaborates with other affinity bars and will help refer interested candidates to the best resources for their preparation.

Past and Future Events

The Infinity Project had some great recent events. Last year, Infinity and the University of St. Thomas Law Journal held a symposium, "Picking Judges in the 21st Century: Who Decides", which examined the evolving judicial selection process at the state and federal levels and judicial diversity from a wide range of perspectives. The all-star list of speakers included Linda Greenhouse (Pulitzer Prize-winning reporter who covered the U.S. Supreme Court for *The New York Times*), Tracey George (Vanderbilt Law School professor and co-author of *The Gavel Gap*, a web-based re-

source highlighting the representativeness of state courts), and Lola Velazquez-Aguilu (Chair of the Minnesota Commission on Judicial Selection and past president of the Infinity Project). More information is available at http://www.theinfinityproject.org/picking-judges-in-the-21st-century-who-decides.

In early March, we held an in-person event entitled "Demystifying the Judicial Selection Process in the 1st District" in coordination with all the affinity bars and other 1st District stakeholders. There were over 40 attendees. We received positive feedback from presenters and attendees for tailoring a program specific to the district. We are working collaboratively with other affinity bars to continue similar efforts in other districts.

Now, like everything and everyone, Infinity's activities have been affected by the pandemic, but we have adapted. In late June, we worked with the Minnesota Association of Black Lawyers, along with other affinity bars, to hold a virtual Bootcamp for "ready-to-go" candidates. Not only are we adapting to safely assist judicial applicants during COVID-19, bringing the Bootcamp model to a virtual space allows more access to applicants in greater Minnesota and to other 8th Circuit partners. Whether it is in-person or virtual, we are also preparing a diversity and bias workshop for the next Eighth Circuit Judicial Conference in 2021.

Sustained Mission in Current Turbulent Times

At a time when the world is wrestling with racial inequities caused by systemic and institutionalized racism, the Infinity Project believes its aims are more relevant than ever. Working towards a more diverse bench – even one vacancy at a time – is a mission that will help advance the delivery of a judicial system that reflects the diversity of the communities being served, thereby building legitimacy and trust.

Irene Kao is primary author of this article. She is the president of the Infinity Project. She also serves as the Intergovernmental Relations Counsel at the League of Minnesota Cities.

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The virtual discussion focused on the Court's recent partnership with Sherburne County Jail to provide defendants and their attorneys the opportunity for virtual meetings. Chief Judge Tunheim stated that the arrangement is working well, and is providing defendants and counsel a safe alternative to in-person meetings. In addition, the discussion focused on what to expect moving forward, including case volume, the status of the grand jury, and the potential use of alternative technologies to host a greater variety of criminal matters. Chief Judge Tunhiem stated that although he is not certain when "standard" criminal hearings will resume, for now, the use of alternative technologies is ensuring that criminal matters proceed in an orderly fashion. \blacksquare

Chad Pennington is an Assistant Federal Public Defender in the District of North Dakota. He is a member of the FBA White Collar Compliance and Criminal Law Committee and a Co-Editor of Bar Talk.

Systemic changes for transforming the Minneapolis Police Department

by Sheri L. Stewart

On Tuesday, June 30, 2020, Jones Day held a webinar, Transforming the Minneapolis Police Department: A Collaborative Approach to Driving Systematic and Cultural Change, moderated by Washington, D.C. partner Shirlethia Franklin and Minneapolis partner Andy Luger. They focused on transforming, collaborating, and reimagining the Minneapolis Police Department in light of George Floyd's May 25, 2020 murder.

The webinar's first half included local community leaders. P.J. Hill, a financial advisor at Wells Fargo and former professional basketball player, said he is hopeful our current generation of millennials have the opportunity to make change. Also, Karl Benson, CEO of the Minnesota Black Chamber of Commerce, shared insights from his program, One2One Connect, which trained recruits before they were brought into the Minneapolis Police Department. Benson found (1) students were quick to justify the police behavior based on what the accused did and not on law enforcement's behavior; (2) students had a "hero mentality," which meant they viewed law enforcement as less empathetic than they should be; and (3) students did not value the education around implicit bias or cultural differences within the neighborhood. Finally, Tony Adams, a Minneapolis police officer for the past 30 years, explained police reform is essential and necessary in our current climate.

The webinar then focused on panelists Ron Davis, a partner at 21CP Solutions and former Obama administration director of the U.S. Department of Justice's Office of Community Oriented Policing Services; and Karol Mason, president of John Jay College of Criminal Justice in New York City

who worked on the National Initiative to Build Community Trust in Justice. This effort combined the principles that addressed procedural justice, implicit bias, and racial reconciliation. Minneapolis was a pilot demonstration site. The current Minneapolis Police Chief, Medaria Arradondo was a principal liaison between the community and law enforcement officers to implement this culture-changing work. Mason emphasized this work takes time and needs a long-term commitment, so she is glad Minneapolis is interested in collaborating with community members to accomplish this goal.

Davis stated, to have effective policing, culture is as important, if not more important, than policies and training. Without the right culture the policies do not carry much weight. Davis clarified that "Policies tell the officers and the community what the officer is required to do while, culture is what officers are doing, are expected to do and what they receive satisfaction, acknowledgement or credit for ... in many cases, culture and policies are not aligned." For example, Davis stressed if a department traditionally ignores misconduct then it shows that the policy encouraging misconduct is not enforced. Hence, if there is no accountability for bad behavior, the culture changes to tolerate misconduct.

Thus, Davis explained "accountability is two-fold: discipline for bad behavior, and reward for good behavior. It takes time to solve the systematic challenges in a culture. A positive culture outlasts the last chief. Therefore, if you are only accountable for solving crime and not accountable for de-escalation, the culture will reflect that." Mason complimented this suggestion by highlighting "procedural justice

requires internal and external connections. For example, in the George Floyd murder in Minneapolis, two of the officers said that they did not feel comfortable to speak up and intervene because they were new to the force." For her, this illustrated a culture that needs to change so that when an officer sees something is wrong, they are not afraid to speak up against it.

In terms of reimagining the Minneapolis Police Department, the moderators shared a video displaying how the Camden, New Jersey, Police Department, which was dismantled, used de-escalation techniques to apprehend a suspect. Davis explained de-escalation techniques are more important than the use-of-force tactics commonly suggested, and the department now recognizes the sanctity of life as a value. Mason suggested law enforcement officers need to have a liberal arts education to be better partners with their community. Both panelists agreed there is a consensus that mental health calls should go to mental health professionals. For example, there is a co-responder model in use where social service workers accompany police officers to some of their calls. Davis explained, "the issue is that the current model for policing asks the police to solve social problems and that is not the role of police."

There is a difference between reasonable force versus necessary force. Ideally, the panelists said force will not be a default mechanism. Instead it will be something officers would be deterred from using. Mason said the Black Student Union at John Jay College for Criminal Justice suggested officers should take racial awareness courses. For Davis, the real question should be, "was the force necessary?" instead of

FBA Leaders Meet with Director for the United States Marshals Service

 $by\ Lauren\ D'Cruz$



On August 3, 2020, several leaders of the Minnesota Chapter of the Federal Bar Association had the privilege of meeting with Donald W. Washington, Director for the United States Marshals Service ("USMS"). Director Washington was in the District of Minnesota for the better part of two days and held meetings with many community

leaders in the Twin Cities area. He also spent time with USMS employees in the District of Minnesota, including U.S. Marshal Ramona Dohman and Chief Deputy U.S. Marshal Janelle Hohnke.

Director Washington was nominated by President Donald J. Trump to lead the USMS on October 2, 2018. The United States Senate confirmed his nomination on March 14, 2019. Director Washington was sworn in as the 11th Director of the USMS on March 29, 2019.

The USMS is America's oldest federal law enforcement agency. As its leader, Director Washington directs a force of more than 5,000 operational and administrative employees spanning 94 districts, 218 sub-offices, and 4 for-

eign field offices. Since the USMS holds a central position in the federal justice system, Director Washington is responsible for all operations involving federal judicial security, fugitive apprehension, witness security, asset forfeiture, and prisoner operations.

Director Washington discussed current issues facing the USMS, including how to continually improve federal judicial security in light of the tragic attack on United States District Judge Salas's family. He explained how the USMS has been successfully working to prevent the spread of COVID-19 in prison populations. He spoke about the USMS's efforts to protect the Mark O. Hatfield United States Courthouse in Portland, Oregon amidst unrest.

He reflected on the role of the USMS in the civil rights movement. In 1960, deputy U.S. Marshals escorted six-year-old Ruby Bridges to class when she became the first African American student to integrate an elementary school in the South. In 1962, deputy U.S. Marshals stood guard over James Meredith as he walked onto the University of Mississippi campus as the first African American student. They protected him until his graduation in 1963.

Director Washington, a former litigator, highlighted the special position that attorneys hold to advocate against injustices in society. He encouraged attorneys to take action to address important issues impacting the rule of law and the administration of justice.

Lauren D'Cruz is a litigation attorney at Schaefer Halleen, LLC focusing on employment discrimination cases. She is also a co-chair of the Community Outreach Committee of the Minnesota Chapter of the Federal Bar Association.

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"was the force reasonable?" The fact that the objectively reasonable standard is based on the word "fear" is problematic because the word "fear" is very vague and dangerous in policing since it can be used without accounting for implicit bias or stereotypes someone may have associated with a specific group.

The moderators indicated future webinars will include police officers, community leaders, and people who deal with union contracts. ■

Sheri Stewart is an attorney at Bassford Remele P.A. in Minneapolis, Minnesota. She has experience practicing in employment law, general liability, construction defect, and trusts and estates law. As a member of the Minnesota Chapter of the Federal Bar Association Diversity and Inclusion Committee, she serves as the Liaison to the Minnesota State Bar Association for the Committee.

Opportunities for Involvement in the Minnesota Chapter of the Federal Bar Association

Interested in getting involved in the Minnesota Chapter of the FBA? Review the list of committees and groups below, and feel free to reach out to the contacts with further questions or to get involved.

Bar Talk Newsletter Committee: The Bar Talk Newsletter Committee works to provide Minnesota FBA Chapter members with timely and valuable information about Chapter business through quarterly publication of the award-winning newsletter Bar Talk. To get involved in Bar Talk, please contact co-chairs Chad Pennington (Chad Pennington@fd.org) or Kelly J. Fermoyle (kelly.fermoyle@faegredrinker.com).

Community Outreach Committee: The Community Outreach Committee seeks to promote the Chapter's mission—to strengthen the federal legal system, the administration of justice, and the rule of law—by engaging with community members, outside organizations, and schools through events, activities, and other programs. To get involved in the committee's activities, please contact co-chairs United States Bankruptcy Judge William J. Fisher (wjfchambers@mnb.uscourts.gov), Cari Heicklen Brunkow (cari.brunkow@hennepin.us), Lauren A. D'Cruz (LDCruz@SchaeferHalleen.com), or Arthur G. Boylan (aboylan@anthonyostlund.com).

<u>Digital Communications Committee</u>: The Digital Communications Committee works to provide Minnesota FBA Chapter members with timely and valuable information about Chapter business through the Chapter website, the events platform, and timely emails to members. To get involved in the Chapter website, events platform, or emails, please contact co-chairs Ann Motl (<u>Ann.Motl@maslon.com</u>) or Vanessa J. Szalapski (<u>szalapski.vanessa@dorsey.com</u>).

Diversity & Inclusion: The Minnesota Chapter of the Federal Bar Association is committed to maintaining a culture that respects, values, and includes all individuals in the Association, the legal profession, and the justice system, regardless of their various unique differences. The Chapter believes that our diversity enriches us, and our inclusion empowers us. Diverse membership generates diverse ideas. Diverse ideas inspire targeted action for the betterment of our judicial system. The commitment to diversity and inclusion is part of our collective duty as lawyers to uphold the Rule of Law and ensure that our justice system considers and reflects the diverse nature of our society. Through thoughtful programming, events, networking opportunities, outreach initiatives, and collaboration with other diverse groups, the Chapter not only connects people through action, but builds community, both inside and outside the Association. To get involved, please contact Vice Presidents United States Magistrate Judge Elizabeth Cowan Wright (Magistrate Wright Chambers@mnd.uscourts.gov), Danielle Mair (Danielle Mair@mnd.uscourts.gov), or Alia M. Abdi (Alia.abdi@zimmreed.com).

<u>Golf Tournament</u>: The Chapter's Annual Golf Tournament is a long-standing annual tradition that brings together members of the bench and bar at an end-of-season celebration filled with friendly competition and camaraderie. To get involved, please contact chairs Joseph J. Cassioppi (<u>jcassioppi@fredlaw.com</u>) or Peter J. McElligott (<u>pmcelligott@anthonyostlund.com</u>).

Intellectual Property Committee: The Intellectual Property Practice Group hosts a series of events designed to high-light cutting-edge legal issues in IP law and to bring together the judges and lawyers who adjudicate and litigate IP cases. If you would like to join the IP Committee or be included in its events, please contact co-chairs Hon. David T. Schultz (schultz chambers@mnd.uscourts.gov), Nathan D. Louwagie (nlouwagie@carlsoncaspers.com), or Sarah M. Stensland (stensland@ptslaw.com).

Law School Outreach Committee: Since 2012, the Law School Outreach Committee (LSOC) has served as a liaison connecting the Minnesota Chapter of the FBA with the FBA law school divisions of each law school in Minnesota. A key goal of the LSOC is to ensure that members of each school's law student division are getting the most out of their membership, including learning about federal practice areas; meeting members of the FBA, federal bar, and judiciary; and cultivating relationships within the legal community. To further these goals, the LSOC provides the local FBA Law Student Divisions with guidance on organizing events, obtaining funding, furthering diversity, and connecting with opportunities within the Minnesota Chapter of the FBA and FBA-National, and holds events to recognize and support law students within the Twin Cities area. To get involved, please contact law school liaisons Hon. Kathleen H. Sanberg (Lynn Hennen@mnb.uscourts.gov) or Christopher Proczko (ChristopherP@sapientialaw.com).

Legal Education Committee: The Legal Education Committee organizes and presents the annual Federal Practice Seminar, a day-long program that is held each summer. The Federal Practice Seminar aims to foster improvements in the practice of federal law, including the elimination of bias and the promotion of diversity and inclusion and high standards of ethical practice, facilitating the administration of justice, and promoting legal education. Committee members will meet regularly over the course of the bar year to identify innovative topics and speakers, develop the Seminar's content, and plan and execute the Seminar To get involved, please contact Vice Presidents of Legal Education Hon. Hildy Bowbeer (bowbeer chambers@mnd.uscourts.gov), Aaron P. Knoll (aknoll@greeneespel.com), or Barry M. Landy (BML@ciresiconlin.com).

Mass Tort, Multi-District Litigation, and Class Action Practice Group: The Mass Tort, Multi-District Litigation, and Class Action Practice Group's mission is to create a diverse community to address a spectrum of issues and substantive questions arising in cases in which a large number of plaintiffs assert common claims. The group focuses on both substantive and procedural legal developments as well as best practices. To get involved, please contact co-chairs United States Magistrate Judge Becky R. Thorson (thorson chambers@mnd.uscourts.gov), Elizabeth R. Odette (elizabeth.odette@ag.state.mn.us), or Rory F. Collins (rory.collins@faegredrinker.com).

Membership: The Membership Committee is responsible for developing and implementing the Chapter's annual membership recruitment and retention programs, engaging in membership outreach to new members with an increased focus on diversity and inclusion with respect to members from the affinity bars, public sector, in-house, and greater Minnesota communities, as well as updating the Chapter's Membership Plan. Members of the Membership Committee review the Chapter's membership reports, which FBA National submits to the Chapter monthly, and contact those whose memberships have recently lapsed. To get involved, please contact Vice Presidents Laura L. Johnson (laura.johnson@faegredrinker.com), Gregory G. Brooker (greg.brooker@usdoj.gov), or Jeffrey P. Justman (jeff.justman@faegredrinker.com).

Monthly Meetings: From September through May of each year, the FBA hosts a monthly luncheon at the Minneapolis Club on a topic of interest to the federal bench and bar. In addition to a chance to hear from engaging speakers on interesting topics, the lunches also offer opportunities for FBA members to network with each other and the federal judges, many of whom are in attendance. Please check the Chapter's website and calendar for additional details. For more information about the FBA monthly lunches, please contact Vice Presidents Adam W. Hansen (adam@apollo-law.com) or Amy S. Conners (aconners@bestlaw.com).

<u>Newer Lawyers Committee</u>: The Newer Lawyers Committee is responsible for coordinating a series of monthly luncheons hosted by members of Minnesota's federal bench for lawyers who have been practicing for five years or less. These luncheons present an excellent opportunity for newer lawyers to gather with federal judges on an informal basis. The Committee also plans events as part of the "Vintage" series, a program that connects newer lawyers with "vintage" lawyers for storytelling and sharing insights about federal practice. To get involved, please contact co-chairs Cassandra Jacobsen (cjacobsen@cozen.com) or Elizabeth M. C. Scheibel (emcavert@gmail.com).

Pro Se Project: The *Pro Se* Project is an important initiative of the United States District Court, District of Minnesota, and the Minnesota Chapter of the Federal Bar Association to improve the administration of justice. The *Pro Se* Project strives to provide civil pro se litigants who receive a judicial referral to the *Pro Se* Project with the opportunity to meaningfully consult with volunteer counsel and thereby enhance access to justice in our federal courts. Thanks to the generous contribution of time and talent by more than 450 volunteer lawyers, the *Pro Se* Project has served in excess of 1,400 pro se litigants over the past decade. Nationally recognized for its work with indigent and disabled individuals, the *Pro Se* Project received the American Bar Association's prestigious Harrison Tweed Award For more information on the *Pro Se* Project and how you can participate, contact the *Pro Se* Project Coordinator, David A. Goodwin (dgoodwin@gustafsongluek.com).

<u>Special Events</u>: The Special Events Committee plans and organizes special events, including the FBA Dinner Dance, for the Minnesota Chapter. To get involved, contact Vice Presidents Joel P. Schroeder (<u>jschroeder@bestlaw.com</u>) or Katherine S. Barrett Wiik (<u>kbarrettwiik@bestlaw.com</u>).

White-Collar Crime Practice Group: The White-Collar Crime Practice Group brings together prosecutors from the U.S. Attorney's Office and defense attorneys practicing in federal court to plan CLEs and social events designed to promote collegiality among lawyers from both sides of the courtroom. To get involved, please contact co-chairs Joseph H. Thompson (Joseph.thompson2@usdoj.gov) or Amanda M. Mills (amills@fredlaw.com). ■

Thursday,
October 1, 2020
Diversity and Inclusion
Committee: Voter Suppression and the Impact
of COVID-19 on Voting
Rights
3:00 PM to 5:00 PM CDTThis is an online event:
https://www.zoom.com

Wednesday, October 7, 2020 Monthly Virtual Luncheon noon to 1:00 p.m.

Wednesday, November 11, 2020 Monthly Virtual Luncheon noon to 1:00 p.m.

Wednesday, December 9, 2020 Monthly Virtual Luncheon noon to 1:00 p m Editors-in-Chief Chad Pennington Kelly J. Fermoyle

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Want to get involved in the Minnesota Chapter of the Federal Bar Association? Visit http://www.fedbar.org/Chapters/Minnesota-Chapter/Chapter-Initiatives.aspx for a full list of committees and information about how to get involved.

Online Registration:

The Minnesota Chapter of the FBA utilizes an online registration system for the monthly Minneapolis Club luncheons. A registration link will be sent to you via e-mail for each luncheon. One feature of the system is the automatic calendar entry; just click "Add to Calendar" from the registration system or your confirmation e-mail. Registration coordinators have the option to register multiple attendees in a single registration. Also, Season Pass Holders must register for each luncheon online to select their meal choice and confirm their attendance.

