

Volume 11  
Issue 3  
March 14, 2018

[www.fedbar.org/  
Minnesota.html](http://www.fedbar.org/Minnesota.html)

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**Federal Bar  
Association**  
Minnesota Chapter

# Bar Talk

## Chapter Adopts Groundbreaking Strategic Plan for Diversity and Inclusion

*By Shannon Bjorklund*

The Minnesota Chapter of the Federal Bar Association is at the forefront of local chapters in seeking to carefully study, assess, and address issues related to diversity and inclusion. The Minnesota Chapter has a longstanding commitment to a diverse and inclusive federal bar, as reflected by its inclusion of this objective in the Minnesota Chapter Bylaws. In 2016-2017, the Minnesota Chapter formed a Diversity and Inclusion Task Force to prepare a strategic plan to set forth how the Minnesota Chapter will continue to fulfill its objectives of diversity and inclusion in the coming years. The Task Force presented a Diversity and Inclusion Strategic Plan (“D&I Strategic Plan”), which was adopted at the October 2017 meeting of the Board of Directors. Excerpts of this visionary D&I Strategic Plan are published in pages 8 through 10 of this issue, and the full text of the D&I Strategic Plan can be found on the Chapter website.

*D&I Strategic Plan, continued on page 8.*

## Thirty-One Chapter Members Receive “Attorney of the Year” Honors

*By Kari Dahlin*

Thirty-one Chapter members were among those whom *Minnesota Lawyer* honored as 2017 Attorneys of the Year in a ceremony held February 7 at the Hyatt Regency.

Both Governor Dayton’s Legal Team and the Minnesota State Legislature’s Legal Team were honored for their work in litigation between the Governor and Legislature in which the Minnesota Supreme Court upheld Governor Dayton’s line-item veto of appropriations for the Legislature’s operating budget. Governor Dayton was represented by attorneys from Briggs & Morgan, including Scott Knudson and Scott Flaherty. The Minnesota Legislature was represented by a team that included Doug Kelley, Steve Wolter, and Kevin Magnuson of Kelly, Wolter & Scott. Kelly also received Circle of Excellence honors for having been named an Attorney of the Year in multiple years.

*Attorney of the Year, continued on page 2.*



*Attorney of the Year, continued from page 1.*

Lew Remele of Bassford Remele; Daniel Gustafson, Amanda Williams, and Eric Taubel of Gustafson Gluek; and Robert Shelquist and Craig Davis of Lockridge Grindal Nauen received the honor for their work on the Syngenta Legal Team. The Syngenta Legal Team represented nearly 70,000 individual corn farmers alleging that Syngenta prematurely commercialized multiple seed products without first obtaining import approval from key U.S. export markets. The farmers alleged that Syngenta's commercialization caused a Chinese embargo of U.S. corn and widespread damage to U.S. corn farmers. Remele and Gustafson also received Circle of Excellence honors.

Katie Crosby Lehman and Heather McElroy of Ciresi Conlin and Daniel L. Scott of Stinson Leonard Street were honored for their leadership of the White Bear Lake Legal Team. The team represented the White Bear Lake Homeowner's Association in a lawsuit against the Minnesota Department of Natural Resources. The Department was held to have violated both the Minnesota Environmental Rights Act and the Public Trust Doctrine for failing to comply with numerous environmental laws and for causing a material adverse effect on Minnesota natural resources, specifically White Bear Lake and the underlying Prairie du Chien-Jordan aquifer. Crosby Lehman was also a Circle of Excellence honoree.

Clayton Halunen and Stephen Premo of Halunen Law; Steven Andrew Smith and Matthew Frank of Nichols Kaster; and Adam Hansen of Apollo Law were honored for their work on the Friedlander Legal Team. The team represented a plaintiff under the Minnesota Whistleblower Act who alleged he was terminated for objecting to his employer's alleged illegal activity even though the managers to whom he complained were aware of the alleged illegal activity. The Minnesota Supreme Court ruled that a 2013 amendment to the applicable statute changed the definition of "good faith" to eliminate consideration of employees' motivations in making reports. Halunen also received Circle of Excellence honors.

Smith and Frank were also honored for their work on the Surly Legal Team, which won summary judgment in favor of a class of servers and bartenders who were forced to share tips with non-tipped employees in violation of the Minnesota Fair Labor Standards Act.

Rachel Clark Hughey and Joe Dubis of Merchant & Gould were honored for their work on the Merchant & Gould Legal Team. Clark Hughey, Dubis, and others provided pro bono assistance to achieve asylum for a mother and her two children. The court granted asylum on multiple grounds, and the government stipulated it would not appeal the decision.

Michael Cockson, Adam Nodler, and Isaac Hall of Faegre Baker Daniels were honored for their pro bono work on the Tenant Remedies Legal Team. The team won multiple significant victories for low-income tenants, including appointment of an administrator to manage much-needed repairs to a Minneapolis apartment building, revocation of a major landlord's fraudulently obtained rental license, and one of the largest rent abatement awards in Hennepin County history.

Patrick Arenz of Robins Kaplan was honored for pro bono work in winning a jury verdict in a federal lawsuit on behalf of a sex tourism victim who was raped by a U.S. citizen in Laos when she was fourteen years old. The verdict is believed to be the first-ever civil jury verdict in a sex tourism case. Arenz also secured a final judgment of more than \$6 million for his client in an IP license dispute.

Pete Surdo of Robins Kaplan received the honor for his pro bono work in securing the voluntary termination of parental rights of a Minneapolis man who pleaded guilty to dismembering and disposing of the remains of the young girl's mother. The voluntary termination paved the way for an adoption in the best interests of the child.

Former Minnesota Supreme Court Chief Justice Eric Magnuson of Robins Kaplan was honored for his work in securing victories in *Leiendecker v. Asian Women United of Minnesota*, in which the Minnesota Supreme Court declared the Minnesota anti-SLAPP statute unconstitutional, and in the *Adams v. Toyota Motor Corp.* appeal, which preserved an \$11.4 million trial verdict in a fatal unintended-acceleration case. Magnuson also received Circle of Excellence honors.

Robert Bennett of Gaskins Bennett Birrell Schupp was honored for obtaining settlements for three plaintiffs in police misconduct cases, including the Philando Castile case. Bennett also received Circle of Excellence honors.

Janel Dressen of Anthony Ostlund Baer & Louwagie was honored for her work on the Lund shareholder buyout matter. Dressen won a buyout award that doubled the offer made to her client.

*Attorney of the Year, continued on page 12.*

## Hate Crimes, Hate Speech, and the First Amendment

By Cassandra Doran

In its first of a four-part Hate Crime CLE Series taking place this spring, the Diversity Committee of the Minnesota Chapter of the Federal Bar Association presented “Hate Crimes, Hate Speech, and the First Amendment” at Robins Kaplan on February 27. The panel and reception that followed was co-sponsored by the Minnesota State Bar Association, the Minnesota Association of Black Lawyers, and the Somali-American Bar Association. The panel focused on the legal history and relevant constitutional law relative to hate crime and hate speech, and explored the tension between ensuring freedom of speech under the First Amendment while preventing hate crime.

Frank Aba-Onu and David Couillard introduced the highly esteemed panel, comprised of Raleigh Levine, Professor of Law at Mitchell Hamline School of Law; Jane Kirtley, Silha Professor of Media Ethics and Law at the School of Journalism and Mass Communication at the University of Minnesota; Keith Mayes, Professor and Chair of the Department of African American and African Studies at the University of Minnesota; and Robert Kahn, Professor of Law at the University of St. Thomas School of Law.

Professor Levine moderated the lively discussion in which the experts offered their insights on this timely topic. Professor Mayes explained that free speech—specifically for those in minority groups—can be used as a source of power, but also pointed out that not all speech is viewed as equal. Professor Mayes explained that the real power ultimately lies with government actors who decide whether or not to arrest and prosecute individuals. Ambiguity in the definitions of hate crime and hate speech can lead to a question of whether the government is reasonably or arbitrarily restricting speech.

In responding to questions about recent protests of undesired speakers on a public university campus, Professor Kirtley pointed out the tendency of generations to demonize the current alternative narrative. Professor Kirtley reminded attendees that this is a repetitive cycle, and any restrictions on speech must be viewpoint-neutral, making the answer always “more speech.” The idea of “counter-speech” is a relatively modern view, explained Professor Levine. The realistic implication of more speech can sometimes result in the shutting down of less-desirable speech because those in power often have more voice.

Professor Kahn encouraged institutions of higher education to find ways to further engage students when they take issue with on-campus speakers. He also pointed out the differences between European speech restrictions compared to the United States, explored the speech rights of computer “bots,” and raised the question of what privacy issues could arise out of videos and photos from highly televised and shared hate crime or hate speech events, such as the Charlottesville protests. In the days of constant exposure to social media, the panel seemed to agree that reactions and punishment of hate crimes and hate speech are coming more from private actors than government entities, making our awareness of this issue even more important.

Please mark your calendars for the remaining three CLE sessions in the series: “Gender and Sexual Orientation Based Hate Crimes” on April 11 from 5:00-6:00 p.m. at Mitchell Hamline School of Law, “Hate Crimes Against Immigrants” on April 24 from 5:30-6:30 p.m. at the Dar Al Farooq Islamic Center in Bloomington, and “The Rising Tide of Hate Crime and What Can Be Done About It” on May 24 at a time to be determined at Windows on Minnesota as part of the FBA Federal Practice Seminar. ■

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*Left to right: Professors Levine, Kirtley, Kahn, and Mayes.*

## **Eighth Circuit Affirms District of Minnesota Ruling that “Insured vs. Insured” Exclusion Bars Coverage for Lawsuit Involving Both Insured and Uninsured Plaintiffs**

*By Kari Dahlin*

In *Jerry’s Enterprises Inc. v. U.S. Specialty Insurance Co.*, 845 F.3d 883 (8th Cir. 2017), the Eighth Circuit affirmed Chief United States District Judge John R. Tunheim’s ruling that an “Insured vs. Insured” exclusion in a directors and officers (“D&O”) policy precludes coverage for the insured’s settlement, even though the underlying action was brought by both insured and uninsured plaintiffs, and even though the insurance policy contained an allocation clause.

Jerry Paulson, the founder of Jerry’s Enterprises, Inc. (“JEI”), a closely held family company, gifted shares of JEI to his children and grandchildren. Paulson died in April 2013, and his estate plan made his widow and daughters members of the JEI Board of Directors and gave them the opportunity to protect the value of their stock until the shares could be redeemed, at which time they would cease to serve as directors. Paulson’s daughter Cheryl Sullivan owned 28.06% of all outstanding JEI shares, and her daughters, Kelly and Monica Sullivan, owned 2.4% and 1.2% percent, respectively.

Sullivan served on the JEI Board for several months, during which time she expressed concern to the other directors regarding the valuation of her shares. After Sullivan and her daughters cashed out their shares, they sued JEI, claiming they were forced to redeem their shares for less than they were worth. After several months of negotiations, the lawsuit settled. JEI sought coverage from U.S. Specialty for its defense costs and monies paid pursuant to the settlement agreement, but U.S. Specialty denied coverage.

The policy’s Insured vs. Insured exception excluded from coverage any claims “brought by or on behalf of, or in the name or right of . . . any Insured Person, unless such Claim is: (1) brought and maintained independently of, and without the solicitation, assistance or active participation of . . . any Insured Person . . . .” The policy defined “Insured Person” as “any past, present or future director, officer, managing member, manager or Employee of the Insured Organization . . . .” The policy defined “claim” as “any civil proceeding commenced by service of a complaint or similar pleading.”

Finally, the policy contained an allocation provision addressing situations in which JEI suffered a loss in connection with a claim that was partially covered by the Policy. The allocation provision provided as follows:

If Loss covered by this Policy and loss not covered by this Policy are both incurred in connection with a single Claim, either because the Claim includes both covered and uncovered matters, or because the Claim is made both against Insureds and against others not included within the definition of Insured, the Insureds and the Insurer agree to use their best efforts to determine a fair and proper allocation of all such amounts . . . .

JEI filed suit in state court, alleging breach of contract, declaratory judgment, and estoppel. U.S. Specialty removed, and both parties moved for summary judgment. At issue was whether Sullivan was an Insured Person under the policy, whether the Insured vs. Insured exclusion applied to her claims, and whether the Insured vs. Insured exclusion applied to her daughters’ claims. U.S. Specialty won summary judgment on each issue.

On appeal, JEI conceded that Sullivan was an insured based on her previous service as a JEI Board member. The Eighth Circuit Court of Appeals held that the Sullivan lawsuit was a “claim” brought with Sullivan’s active participation and therefore was not covered. The lawsuit was a “claim” because it was “a civil proceeding commenced by service of a complaint.” Since Sullivan brought the lawsuit, the “active participation” exception to the Insured vs. Insured exclusion did not apply.

JEI next invoked the allocation clause to argue that the lawsuit was partially covered because neither of Sullivan’s daughters were Insured Persons. JEI relied on *Level 3 Communications, Inc. v. Federal Insurance Co.*, 168 F.3d 956 (7th Cir. 1999), which declined to apply an Insured v. Insured exclusion to preclude coverage for an entire action, instead allocating loss between “covered and uncovered matters,” where one of the eight plaintiffs was a former director who became a party to the lawsuit six months after it was filed. The Eighth Circuit distinguished *Level 3*, noting that Sullivan “was the driving force of the litigation,” “owned the vast majority of shares at issue in the underlying lawsuit,” and “was the former director who repeatedly raised concerns about the valuation of shares to JEI’s board of directors.” Since Sullivan brought suit as one of the original plaintiffs and joined each claim in the lawsuit, she was not a “passive shareholder who joined the lawsuit six months after it had been filed.”

*Eighth Circuit, continued on page 12.*



## The Latino Legal Experience in Minnesota: A Series

*Adapted from text written by, and photos courtesy of, Rebecca Parks*

As part of its community outreach initiative, over this past year the Minnesota Chapter of the Federal Bar Association has partnered with the Minnesota Hispanic Bar Association (“MHBA”) and the District of Minnesota to present a multi-part series titled “The Latino Experience in Minnesota.”

Part One of this series took place on October 18, 2016, when more than 100 Latino students from the Minneapolis and St. Paul area participated in an interactive program at the Minnesota History Center in St. Paul. The program for the students featured a meet-and-greet and question-and-answer session with United States Supreme Court Justice Sonia M. Sotomayor, who shared her experiences growing up and how her ethnicity has shaped her life. Other highlights included the presentation of the colors and the reciting of the Pledge of Allegiance in Spanish by the El Sol Boy Scouts. Singers from Anwatin Middle School also sang *America the Beautiful* and *The Star Spangled Banner*.

Middle school and high school students in attendance were selected based on writing, artwork, and oral history projects they submitted to the MHBA on the theme “My Past, My Future: Latino in Minnesota.” Each student attending received a copy of Justice Sotomayor’s book, *My Beloved World*. More than 200 federal and state judges, members of the legal community, and parents were in attendance to observe the program.

*Latino Legal Experience in Minnesota, continued on page 11.*



## Annual Law Student Reception Brings Together Students, Federal Bench and Bar

*By Cassandra Doran*

On February 8, 2018, nearly 100 law students and members of Minnesota's federal bench and bar spent the evening mingling and networking over drinks and appetizers at Ballard Spahr LLP's offices in the IDS Center. The FBA Annual Law Student Reception, organized by Law School Outreach Committee co-chairs Lauren D'Cruz and Paige Stradley, provides an excellent opportunity for law students to learn more about the practice of law from federal practitioners and judges in a relaxed atmosphere.

Chapter President-Elect Kelly G. Laudon welcomed attendees and highlighted the benefits of involvement in the Chapter, including the monthly luncheons, various networking events, and the bench's unique participation in the Chapter. In addition to meeting federal practitioners, law students also had the chance to speak with Chief United States District Judge John R. Tunheim, United States District Judge Patrick J. Schiltz, United States Bankruptcy Judge William J. Fisher, and United States Bankruptcy Senior Judge Michael E. Ridgway, who also attended the reception. The Law School Outreach Committee awarded six lucky law students free FBA memberships to encourage continued participation in Chapter events. ■

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*Cassandra Doran is a law student at Mitchell Hamline School of Law and a law clerk at Cozen O'Connor.*

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Chapter President-Elect Kelly Laudon and Mark Stewart, chair of Ballard Spahr.



Paige Stradley and Lauren D'Cruz raffle off FBA memberships to six lucky students.

## Newer Lawyers Lunch Examines a Potpourri of Bankruptcy Principles

*By Nick Valle*

The Minnesota Chapter continued the tradition of hosting a series of chamber luncheons on February 8. This luncheon featured United States Bankruptcy Senior Judge Michael E. Ridgway and provided an excellent opportunity for newer lawyers in the metro area to learn about bankruptcy law in an informal setting from the perspective of the bench. The conversation with Judge Ridgway included bankruptcy basics, important insights into the recent developments of the law, hot topic areas, and important practice pointers. Judge Ridgway stressed one key point: he "guarantee[ed]" that everyone would be faced with at least one bankruptcy issue at some point in their legal career." This was illustrated by the many of Judge Ridgway's first-hand experiences, both on and off the bench, in a variety of arenas within the legal profession. Finally, the discussion ended with a question-and-answer period to allow the audience an opportunity to learn more about Judge Ridgway and his experiences with bankruptcy law. ■

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*Nick Valle is a second-year student at Mitchell Hamline School of Law.*

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## The Legality of Hosting the Super Bowl

By George N. Henry

This article shares some light-hearted musings on questions of law that linger just beneath the surface of hosting the Super Bowl.

For the curious and observant, hosting the Super Bowl raised all kinds of quandaries.<sup>1</sup> For example, how did the gentleman with a cardboard sign “Need Tickets” plan to follow up on his pleading—was he carrying several thousand dollars in cash, a phone-based credit-card reader, a promissory note?<sup>2</sup> What draws people to bet on the (strange) tradition of dumping a cooler of Gatorade on the winning coach?<sup>3</sup> And what exactly is the best way to remove a bike lock from around a protester’s neck when he/she is secured to a fence while blocking the light rail?<sup>4</sup>

A few more moments of musing for the legally inclined opens a host of other interesting inquiries. Contract rights go back hundreds of years, yet we still struggle with how to deal with the resale of tickets on the secondary market.<sup>5</sup> Minnesota repealed its misdemeanor for “ticket scalping” in 2007.<sup>6</sup> Other states have (attempted to) ban the practice.<sup>7</sup> Beyond the policy considerations of who should gain from scarcity-driven inflation are the legal questions of who owns the rights to attend the event after a ticket is purchased and whether an event organizer can contract to prevent the resale of tickets. And speaking of inflation, what are the tax consequences for those engaged in re-selling tickets?<sup>8</sup>

Contracts and tickets also raise questions of liability for those attending the events. As just one example, consider the questions swirling around erecting towers and a cable to let people zipline across the Mississippi.<sup>9</sup> What type of contract was formed with the tickets, and did it provide any protection for the chance that it could have been anywhere from -20 degrees to sleeting?<sup>10</sup> What city regulations might apply to such an apparatus? And how much liability insurance does it take to put up a zipline over the Mississippi—what exclusions would you put into that policy?

The legal issues from Super Bowl entrepreneurs spread far beyond ticket scalpers. Copyright and criminal laws address people attempting to sell fake tickets and unofficial Super Bowl souvenirs.<sup>11</sup> Setting up private events in public spaces raises questions of municipal law—how and when can a city restrict access to an otherwise public space and how can the city and event organizers regulate who can sell what around the edges of those events? Beyond the physically present, tickets, souvenirs, and bets can all be acquired online from a host of entities with various degrees of reputability and proximity. Who regulates a Minnesota person betting on the color of celebratory bathing liquid from a website that is hosted in Malaysia?

*Legality of Hosting the Super Bowl, continued on page 11.*

1 Footnotes have a long history in Minnesota legal writing. See John E. Simonett, *The Footnote as Excursion and Diversion*, 55 A.B.A. J. 1140 (1969). And although their ability to inform can vary, see, e.g., David Foster Wallace, *Infinite Jest* 983-1079 (10th anniversary ed., Back Bay 2006) (1997), I will strive to keep these commensurate to the publication.

2 Observed by your author a few blocks from the stadium on game day.

3 It happened to be yellow Gatorade this year with odds set by one establishment at +225 (\$225 payout on a \$100 winning bet). Stephen Campbell, *Super Bowl Gatorade Shower Prop Odds*, <https://www.odds shark.com/super-bowl/props/gatorade-shower>. One theory on how this tradition started traces its roots back to the 1984 Giants who provided a celebratory dousing to their coach seventeen times that season. See *id.*

4 One option is to explain how you are going to put a fire-protection hood on the person and then grind the U-Lock off and see if he/she produces the key. Unicorn Riot, *Light Rail Blockade by Super Bowl* pt. 3 1:09:00-1:10:00, (removing first U-Lock), <https://livestream.com/unicornriot/events/8044126/videos/169783237>; see also Atremis Moshtagian, *There are two sides to the story behind a strange protest photo*, <https://www.cnn.com/2017/10/12/us/story-behind-portland-arrest-photo-trnd/>. Another option is to search the person and see if he/she has the key. Unicorn Riot, at 1:21:40 to 1:22:55.

5 See, e.g., *Dyer's case* (1414) 2 Hen. V, fol. 5, pl. 26.

6 Minn. Stat. § 609.805, repealed by 2007 ch. 47 § 1; 2007 ch. 54 art. 2 § 19.

7 Seat Geek, *The Curious Case of U.S. Ticket Resale Laws*, <https://seatgeek.com/tba/articles/ticket-resale-laws/>.

8 And speaking of taxes, how would someone report taxes on income from \$160 church parking spaces that your author observed near the stadium on game day?

9 *Bold North Zip Line*, <https://www.mnsuperbowl.com/zipline>.

10 Demonstrating the unpredictable nature of Minnesota winters, leading up to the Super Bowl there were temperatures ranging from a high of 47 degrees on January 26, 2018, to a low of -7 degrees on February 2, 2018. Nat'l Oceanic and Atmospheric Admin., *Daily Summaries Station Details*, MSP, <https://www.ncdc.noaa.gov/cdo-web/datasets/GHCND/stations/GHCND:USW00014922/detail>. Participants accepted the risk of a weather-related cancellation. <http://boldnorthzipline.com/Bold-North-Zip-Line-FAQS>.

11 CBS Minnesota, *Police: \$924K Bought In Fake Super Bowl Tickets, 19 Arrested*, <http://minnesota.cbslocal.com/2018/02/20/counterfeit-super-bowl-tickets/>.



## Strategic Plan for Diversity and Inclusion

**Goal 1: Engage in ongoing and effective communication with diverse legal communities about what the Minnesota FBA does (mission, activities and programs, opportunities) and why it is important (value proposition).**

### Year 1 (2017–18)

1. **Develop D&I Value Proposition.** Develop a written articulation of the value proposition for a diverse and inclusive FBA.
2. **Develop D&I Communications Plan.** Develop Communications Plan to promote diverse and inclusive participation.
3. **Invite Affinity Bars.** Continue the practice of distributing invitations and other key communications to the Affinity Bars, in order to continuously invite diverse judges and lawyers to Chapter programs and events.
4. **Create D&I Web Page.** Create D&I page on Chapter website to effectively communicate the strategic plan.

### Year 2 (2018–19)

1. **Continue initiatives started in Year One.** Review and update D&I Value Proposition and Communications Plan. Continue to develop D&I Web Page. Continue invitations to Affinity Bars.
2. **Publish testimonials.** Identify newsletters, editors, and editorial calendars of Affinity Bars and write mini-testimonials to submit for publication highlighting the D&I Value Proposition.
3. **Publish about diverse Chapter members and leaders.** Actively work to feature and promote diverse Minnesota judges and lawyers in *Bar Talk* and *Federal Lawyer*.

### Year 3 (2019–20)

1. **Continue initiatives started in Years One and Two.** Review and update D&I Value Proposition. Review and update D&I Value Proposition and Communications Plan. Continue to develop D&I Web Page. Continue invitations to Affinity Bars. Continue to publish mini-testimonials, and actively work to feature and promote diverse Chapter members and leaders in *Bar Talk* and *Federal Lawyer*.
2. **Develop D&I History Project.** Collect, organize, and house historical information on Chapter's D&I programming and write history of that work for publication in *Bar Talk*, *Federal Lawyer*, and Chapter website.

**Goal 2: Increase diversity of membership in the Minnesota FBA.**

### Year 1 (2017–18)

1. **Appoint Affinity Bar Liaisons.** Central to this Strategic Plan is the appointment of liaisons to Affinity Bar Associations, who will build bridges to their respective Affinity Bars with certain goals in mind: (1) listening and understanding the perspectives of the Affinity Bars; (2) establishing relationships with the Affinity Bars; (3) communicating to the Chapter about perspectives, priorities, and key events of the Affinity Bars. These efforts will strengthen the relationship between the Chapter and the affinity bars and, ultimately, increase the diversity of membership in the FBA.
2. **Ensure diversity of presenters at Chapter programs.** The Chapter must continue to actively and purposefully increase the number of diverse presenters at its CLE programs.
3. **Ensure Chapter programs incorporate themes of diversity and inclusion.** Chapter programming should continue to incorporate diversity and inclusion at all levels through both direct programming and inclusion of diverse perspectives.
4. **Make personal invitations to diverse judges and lawyers.** Identify and personally invite diverse judges and attorneys to Chapter programs and to join the FBA.

### Year 2 (2018–19)

1. **Continue initiatives started in Year One.**
2. **Sponsor Key Events for Affinity Bars.** With the help of the Affinity Bar Liaisons, the Chapter will identify at least one event that is important to each Affinity Bar and implement a plan for sponsorship and attendance by Chapter Leaders.

*D&I Strategic Plan, continued on page 9.*



## Strategic Plan for Diversity and Inclusion

*D&I Strategic Plan, continued from page 8.*

3. **Evaluate best method for collaboration with D&I efforts of non-Affinity Bar Associations. Consider opportunities to collaborate with non-Affinity Bar Associations.**
4. **Consider diversity census or survey.** To gain a clear picture of the makeup of its membership, consider a diversity census or survey to establish a benchmark for current membership and measure efforts to increase diversity.

### *Year 3 (2019–20)*

1. **Continue initiatives started in Years One and Two.**
2. **Plan and host D&I Summit.** Plan a Diversity and Inclusion Summit involving Affinity Bars, Corporate Counsel, Non-Profits, Law Firm Diversity Committees, and other members of the federal community.

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### Goal 3: Increase diversity of leadership in the Minnesota FBA.

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#### *Year 1 (2017–18)*

1. **Develop D&I Leadership Application and Nomination process.** Craft and implement specific action items to ensure that the face of Chapter leadership reflects our diverse community.
2. **Publish leadership application and nomination process.** Publish information about FBA application/nominations process and leadership opportunities on Chapter website and in *Bar Talk*.
3. **Publicize opportunities to get involved.** Publicize opportunities for involvement with Chapter committees, which are a natural step to Chapter leadership, through outreach to Affinity Bars, posting information on the Chapter website, and publication in *Bar Talk*.
4. **Explore avenues to cultivate diverse and inclusive leadership pipeline.** Investigate opportunities for Chapter to join efforts to build a diverse leadership pipeline.

#### *Year 2 (2018–19)*

1. **Continue initiatives started in Year One.**
2. **Implement plan to cultivate diverse and inclusive leadership pipeline.**

#### *Year 3 (2019–20)*

1. **Continue initiatives started in Years One and Two.**

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### Goal 4: Integrate commitment to diversity and inclusion throughout infrastructure of the Chapter.

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#### *Year 1 (2017–18)*

1. **Launch and publish D&I Strategic Plan.** Present Strategic Plan to Chapter Board for approval.
2. **Leadership on D&I Strategic Plan.** Provide guidance to Chapter leadership on their roles in executing the Strategic Plan.
4. **Ensure accessibility to all Chapter events and construct Chapter calendar in view of dates important to diverse communities.** Ensure event locations are welcoming and accessible to diverse speakers and attendees, and avoid calendar dates that are significant to diverse leaders and members.
5. **Include D&I in other Chapter work, including mentoring work, budgeting, and financial planning.** Incorporate D&I into mentoring program. Evaluate Chapter fund balance and policy in view of our commitment to diversity and inclusion, including continuation of ongoing work and new opportunities.
8. **Evaluate discounted/blended membership rates for members of Affinity Bars.** Consider the financial barrier to entry that can preclude someone from becoming involved, and consider ways to make membership easier for traditionally underrepresented communities.
9. **Evaluate Chapter Bylaws and Chapter Committee structure.** Evaluate Chapter Bylaws to determine if any amendments are needed to align with the Chapter's commitment to diversity and inclusion. Consider whether the existing committee structure best serves the needs of our diverse legal community.

*D&I Strategic Plan, continued on page 10.*

## Strategic Plan for Diversity and Inclusion

*D&I Strategic Plan, continued from page 9.*

### **Year 2 (2018–19)**

1. **Continue initiatives started in Year One.**
2. **Evaluate Chapter's implementation of Year 1 of the D&I Strategic Plan and make any appropriate adjustments or updates for Year 2.**

### **Year 3 (2019–20)**

1. **Continue initiatives started in Years One and Two.**
2. **Evaluate success of D&I Strategic Plan in meeting its five stated goals in Years One and Two and prepare D&I Strategic Plan for next three to five year period.**

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### **Goal 5: Leverage and build external partnerships to advance diversity and inclusion in the FBA.**

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### **Year 1 (2017–18)**

1. **Outreach by Chapter President.** Chapter President to reach out personally to President of each Affinity Bar and related organization to establish relationship and talk about potential ways for organizations to collaborate in the coming year.
2. **Invitations by Chapter President to Monthly Luncheons.** Chapter President to invite each Affinity Bar leader to attend at least one monthly luncheon per year as a special guest of the Chapter.
3. **Invitations by Chapter President to Federal Judges' Dinner Dance.** Chapter President to invite Affinity Bar leaders to be special guests of the Chapter at annual Federal Judges' Dinner Dance.

### **Year 2 (2018–19)**

1. **Continued initiatives started in Year One.**
2. **Host roundtables on diversity and inclusion "Best Practices."** The Chapter can learn a great deal from successful diversity and inclusion policies/practices implemented by corporations in Minnesota, as well as non-profit legal organizations, law firm diversity committees, and other bar organizations. By creating a space at the roundtable for other organizations that are pursuing similar goals, the FBA's diversity and inclusion efforts are more likely to be effective.

### **Year 3 (2019–2020)**

1. **Continue initiatives started in Years One and Two. ■**



*Latino Legal Experience in Minnesota, continued from page 5.*

Part Two of the series involved visits to Anwatin International Baccalaureate World School Spanish Dual Immersion and Cristo Rey Jesuit High School in Fall 2017 to commemorate Hispanic Heritage Month. Visits included panel discussions with Senior United States District Judge Ann D. Montgomery, Minnesota Fourth Judicial District Judge Nelson Peralta, Jerry Alcazar, Aleida Conners, Amy Conners, and other attorneys from the MHBA. As part of the program, students at both schools watched the *Someone Like Me Can Do This* video, as well as the highlight video from Justice Sotomayor's visit to Minnesota in October 2016. During the program, students asked panelists about their experiences growing up, attending law school, and working in the legal field as a Latino. Students were also able to sign up for the continuing mentor program with a member of the MN Hispanic Bar Association.

More information about the Community Outreach program for the United States District Court for the District of Minnesota can be found at <http://www.mnd.uscourts.gov/Community-Outreach.shtml>. ■



*Legality of Hosting the Super Bowl, continued from page 7.*

Law enforcement ends up with its own set of legal questions to resolve as well. Such a high-profile event brings in a dizzying array of acronyms with overlapping jurisdictions to keep the location safe.<sup>12</sup> Who has control of the airspace and under what authority can drones be banned in a 30-mile radius of the stadium?<sup>13</sup> As well as sorting out the various jurisdictions, we ask our criminal justice system to balance First Amendment and property rights as people leverage the visibility of the event to raise other issues. What criminal laws apply to a group of Black Lives Matter protesters who formed a sleeping dragon to block the Green Line light rail tracks?<sup>14</sup> How does the civil disobedience affect the outcome of their criminal cases? What permits should a protest march obtain for a trek through downtown to the stadium and what laws apply if they do not follow those procedures?

And finally, what really does constitute a catch in the NFL, anyway?<sup>15</sup>

*George N. Henry is an Assistant City Attorney for the City of Minneapolis.*

<sup>12</sup> Janet Moore, *Security deployed at Super Bowl is largest in Minnesota history*, Star Tribune, <http://www.startribune.com/security-deployed-at-super-bowl-largest-in-minnesota-history/471452694/> (noting 60 police departments and 40 federal agencies involved).

<sup>13</sup> For some context, it's only a 27-mile drive to Hudson, Wisconsin from the stadium. FAA Drone Registration, *Super Bowl 52 No Drone Zone Within 30 Miles*, <https://drone-registration.net/super-bowl-52-no-drone-zone-within-30-miles/>.

<sup>14</sup> Patrick Young, *The Next Page: Hot trends in protest technology* (Mar. 17, 2007) <http://www.post-gazette.com/Op-Ed/2007/03/18/The-Next-Page-Hot-trends-in-protest-technology-1/stories/200703180245> (discussing some history of lock-down tactics).

<sup>15</sup> See, e.g., *Zach Ertz Catch & Jesse James Non-Catch vs. Patriots*, <https://www.youtube.com/watch?v=SfGsp9um2LA>, or any number of other articles and videos parsing the subject.

*Eighth Circuit, continued from page 4.*

Although the Eighth Circuit recognized the tension between the Insured vs. Insured and allocation clauses, it concluded that application of the allocation clause would read the assistance exception in the Insured vs. Insured out of the policy. Whereas the Insured v. Insured exclusion permitted coverage for claims related to Insured Persons only if those claims were brought independently and without the active participation of an Insured Person, none of the claims in the Sullivan lawsuit were covered. ■

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*Kari Dahlin is an associate at Bassford Remele, P.A.*

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*Attorney of the Year, continued from page 2.*

Karin Ciano of Karin Ciano Law was honored for her work as Executive Director of the Collaborative Community Law Initiative, a nonprofit law firm incubator in St. Paul that teaches recent Mitchell Hamline graduates to build sustainable, independent small-firm practices that serve the needs of low- and moderate-income Minnesotans.

Tara Norgard of Carlson Caspers was honored for her longtime service to the Federal Bar Association. Norgard is the immediate past president of the Minnesota Chapter and serves on its board of directors. In 2017, Norgard was appointed chair of the national FBA's special committee on diversity. Norgard also received Circle of Excellence honors.

Andrew Mohring of Ciresi Conlin was honored for outstanding service to the profession. Mohring served in the Office of the Federal Defender from 1989 to 2017, first as an Assistant Federal Defender, then as the First Assistant. Mohring writes and speaks locally and nationally on federal criminal practice topics and is an adjunct professor at the University of Minnesota. He is an active member of the Minnesota Supreme Court's Advisory Committee on the Rules of Criminal Procedure and the ABA Task Force on Discovery Standards.

*Minnesota Lawyer* also honored four judges for their decades of outstanding service to the profession.

United States Court of Appeals for the Eighth Circuit Senior Judge Diana E. Murphy was honored for her years of public service, including two years as a Hennepin County municipal court judge, two years as a Hennepin County judge, fourteen years as a federal district judge, and twenty-four years as an Eighth Circuit judge. Judge Murphy chaired the United States Sentencing Commission from 1999 to 2004 and is the first woman to serve on the Eighth Circuit Court of Appeals.

Senior United States District Judge Ann D. Montgomery was honored for her years of public service, including service as a law clerk on the District of Columbia Court of Appeals, seven years as an Assistant United States Attorney for the District of Minnesota, two years as a Hennepin County municipal court judge, nine years as a Hennepin County judge, and twenty-two years as a federal judge. Judge Montgomery was also a Circle of Excellence honoree.

Senior United States District Judge Donovan W. Frank was honored for his public service career, including eight years as assistant county attorney for St. Louis County and thirteen years as a St. Louis County judge, five of which he served as Chief Judge. This year, Judge Frank celebrates twenty years on the federal bench.

Senior United States District Judge Richard H. Kyle was honored for his service to the public, including service as a law clerk in the District of Minnesota, Solicitor General of the Office of the Minnesota Attorney General, twenty-nine years of private practice, and twenty-six years on the federal bench. ■

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*Kari Dahlin is an associate at Bassford Remele, P.A.*

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## Open Communication, Closed Case

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## Mark Your Calendars!

### Disability and Injustice Seminar

Join us for a panel discussion and lunch to learn more about legal protection and advocacy for individuals with disabilities in the wake of the #metoo movement, particularly individuals with disabilities who are subject to sexual assault and harassment.

**Thursday, March 29, 2018**

11:30 a.m.: Lunch

12:00 p.m.–1:00 p.m.: Program

Robins Kaplan LLP  
800 LaSalle Avenue  
28th Floor Conference Center  
Minneapolis

Panelists:

**The Honorable Donovan W. Frank**, Senior United States District Judge for the District of Minnesota

**Ana H. Voss**, Civil Chief, United States Attorney's Office

**James C. Backstrom**, Dakota County Attorney

**Katie McDermott**, The Arc Minnesota, Self-Advocate

**Christopher Pinahs**, Robins Kaplan LLP (Moderator)

With video remarks by **U.S. Senator Amy Klobuchar**

1.0 Elimination of Bias Credit applied for in Minnesota

CLE credit pending approval by the Minnesota State Board of Continuing Legal Education.

CLE credit will be applied for in other states based on attendance.

Please contact [MMarte@RobinsKaplan.com](mailto:MMarte@RobinsKaplan.com) to register. **Please register by March 16.**

If you need reasonable accommodations to participate in this event, please notify Mabel Marte at [MMarte@RobinsKaplan.com](mailto:MMarte@RobinsKaplan.com) or 212.980.7476. Please provide notification at least 72 hours prior to the meeting to allow sufficient time to make arrangements for accommodations at this meeting.

PLEASE JOIN US FOR THE EIGHTH ANNUAL  
DISABILITY JUSTICE SEMINAR

**WHO IS LEFT BEHIND  
IN THE #METOO  
MOVEMENT?**



### 44th Annual Federal Practice Seminar and Mason Memorial Lunch

Please join us for the 44th annual Federal Practice Seminar, which will take place on Thursday, May 24, 2018, from 8:00 a.m. until 6:00 p.m. at Windows on Minnesota, 50th Floor, IDS Center.

This year's format will include "Pop-Up Talks" about cutting-edge legal issues, and the program will feature outstanding speakers on topics that span the practice of law today, from emerging issues in arbitration and trial practice to an in-depth program about hate crimes. Our presenters will include practitioners, federal judges, and experts in a variety of fields.

The Mason Memorial Luncheon will feature Christian Picciolini, co-founder of Life After Hate, who will recount his remarkable journey from life as an internationally renowned neo-Nazi skinhead to a new mission fighting hatred and bigotry.

*Additional details forthcoming.*

## Application/Recommendation Form for Officer and Committee Leadership Positions

The Minnesota Chapter of the Federal Bar Association seeks outstanding, service-minded individuals who reflect the breadth and diversity of the Chapter's membership to fill officer and committee leadership positions for the 2018–19 year (Sept. 1, 2018–Aug. 31, 2019). The current leadership roster is available online at [http://www.fedbar.org/Chapters/Minnesota-Chapter/Officers\\_1.aspx](http://www.fedbar.org/Chapters/Minnesota-Chapter/Officers_1.aspx). Details on initiatives for which each leader is responsible are at <http://www.fedbar.org/Chapters/Minnesota-Chapter/Chapter-Initiatives.aspx>.

All applications and recommendations will be considered by the Chapter's Nominations Committee. Committee chair positions will be appointed by the Chapter President, and officer positions will be nominated by the Nominations Committee for election by the membership. Please note that officer positions are open to current Board and Executive Committee members. Completed forms may be emailed to President-Elect Kelly G. Laudon at [laudonk@ballardspahr.com](mailto:laudonk@ballardspahr.com). **The deadline for the submission is March 21, 2018.**

Name of applicant or recommended candidate: \_\_\_\_\_

Applicant/candidate's contact information (organization, email, phone number, and mailing address):

\_\_\_\_\_  
\_\_\_\_\_

Requested/Recommended Committee Chair/Officer position(s) (in order of preference):

\_\_\_\_\_

Name and contact information of person submitting a recommendation:

\_\_\_\_\_  
\_\_\_\_\_

For those submitting a recommendation, have you discussed your recommendation with the candidate and has the candidate indicated an interest and willingness to serve in the recommended position(s)?    ☐ Yes    ☐ No

1. For applicants: Why are you interested in serving in the role(s) designated above, and what experience and qualities would you bring to your work as a Committee leader?

For recommendations: Why are you recommending this person for the role(s) designated above, and what experience and qualities would the person bring to her/his work as a Chapter leader?

\_\_\_\_\_  
\_\_\_\_\_

2. Describe your/the candidate's current and past involvement and leadership experience in Chapter activities and committees.

\_\_\_\_\_  
\_\_\_\_\_

3. Describe your/the candidate's current and past involvement and leadership experience in other bar associations or non-profit organizations.

\_\_\_\_\_  
\_\_\_\_\_

4. To be a candidate for leadership, a person must be a member in good standing of the Minnesota Chapter of the Federal Bar Association. Are you/the candidate a member in good standing of the Chapter?

☐ Yes    ☐ No, but I will join the FBA by April 1, 2018

## Upcoming Events:

**March 21, 2018**

*Newer Lawyers Lunch  
featuring Magistrate Judge  
Bowbeer*  
Noon  
St. Paul Federal Court-  
house

**March 29, 2018**

*Disability Justice Seminar*  
11:30 a.m.  
Robins Kaplan, Mpls

**April 5, 2018**

*Insights from Corporate  
Trailblazers of Color*  
5:00 p.m.  
Robins Kaplan, Mpls

**April 11, 2018**

*Monthly Luncheon*  
Noon  
Mpls Club

**April 11, 2018**

*Transgender, Sexual Orien-  
tation, and Gender-Based  
Hate Crimes*  
5:00 p.m.  
Mitchell Hamline School of  
Law, St. Paul

**April 17, 2018**

*Newer Lawyers Luncheon  
featuring  
Magistrate Judge Schultz*  
Noon  
Mpls Federal Courthouse

**April 24, 2018**

*Hate Crimes Against Im-  
migrants*  
Time TBD  
Dar Al Farooq Islamic  
Center, Bloomington

**May 5, 2018**

*Federal Judges' Dinner  
Dance*  
6:00 p.m.  
Minikahda Club, Mpls

**May 9, 2018**

*Monthly Luncheon*  
Noon  
Mpls Club

**May 24, 2018**

*Federal Practice Seminar*  
8:00 a.m.  
Windows on Minnesota,  
IDS Center, Mpls

*Editors-in-Chief*  
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**Fran Kern**

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*Bar Talk* is the official newsletter of the Minnesota Chapter of the Federal Bar Association. It is published quarterly by the Communications Committee. For any inquiries or article suggestions, please contact **Fran Kern** at [frances\\_kern@hotmail.com](mailto:frances_kern@hotmail.com) or **Shannon Bjorklund** at [bjorklund.shannon@dorsey.com](mailto:bjorklund.shannon@dorsey.com).

A special thank you to **Rebecca Baertsch**, Judicial Assistant to Judge Donovan W. Frank, for her proofreading expertise, and **Taya Swenson Schmid**, Dorsey & Whitney LLP, for her layout assistance.

**Thank you to Xact Data Discovery for printing this issue of *Bar Talk*.**

***Want to get involved in the Minnesota  
Chapter of the Federal Bar Association?  
Visit [http://www.fedbar.org/Chapters/  
Minnesota-Chapter/Chapter-Initiatives.  
aspx](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.

If you have any questions about the registration system, please e-mail Liz Cowan Wright at [liz.wright@faegrebd.com](mailto:liz.wright@faegrebd.com).



**Federal Bar  
Association**  
**Minnesota Chapter**