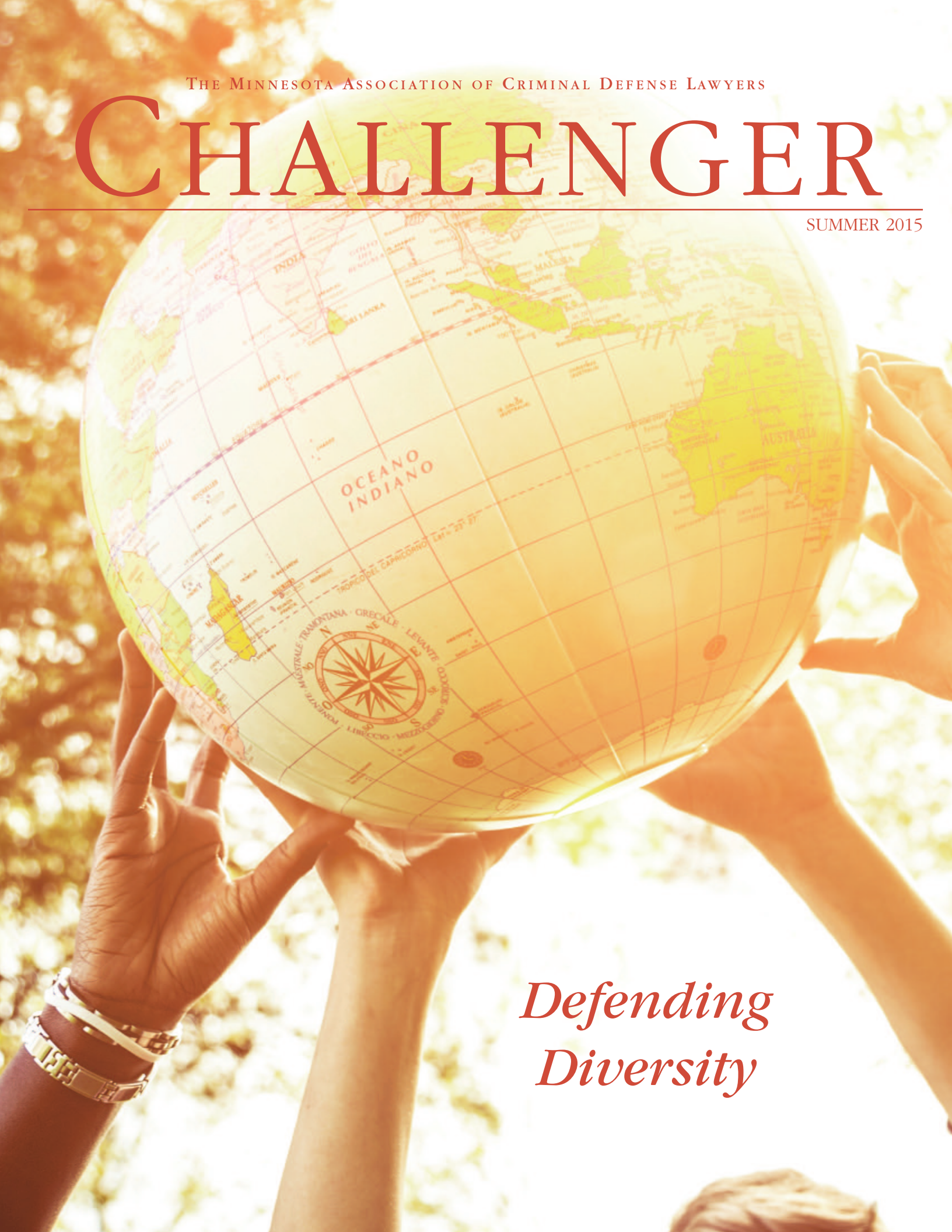
The Minnesota Association of Criminal Defense Lawyers

Challenger

SUMMER 2015



Defending Diversity

For information on articles or advertising, please contact:

Ryan Garry
Attorney
333 South 7th Street, Suite 2350
Minneapolis, MN 55402
612-436-3051 (office)
612-436-3052 (Fax)
ryan@ryangarry.com
www.ryangarry.com

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Ryan Garry
Editor

Minnesota Association of Criminal Defense Lawyers
Publisher

Carolyn Agin Schmidt
President

Paula Brummel
Executive Director, MACDL

Challenger Committee
Dan Guerrero
Gretchen Gurstelle
Piper Kenney
Nicole Nichols
Robert Richman

Challenger is published two to three times a year by MACDL, a Minnesota nonprofit corporation. Its mission is to advance the advocacy skills of MACDL members, to inspire and motivate aggressive, ethical,and effective defense for all accused, and to connect the criminal defense community in Minnesota.

Articles express the opinion of the contributors and not necessarily that of Challenger or the MACDL. Headlines and other material outside the body of articles are the responsibility of the Editor. Challenger accepts letters and unsolicited manuscripts about the practice of criminal defense or the trial of criminal cases. Contact:

Ryan Garry,
Attorney
333 South 7th Street, Suite 2350
Minneapolis, MN 55402
612-436-3051 (office)
612-436-3052 (Fax)
ryan@ryangarry.com
www.ryangarry.com

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MACDL: A Ten-Year Look Back Period…and A Glimpse Into the Future.

Carolyn Agin Schmidt

My first exposure to MACDL was the annual dinner in, I believe, 2002. Doug Thomson was being honored and a food fight broke out between Earl Gray and Bill Mauzy. This event, like most MACDL dinners was, a riot and I immediately thought: *I need to be part of this organization; it's so much more fun than any other legal associations*. Three years later I joined the MACDL Board of Directors. Over the past 10 years I have watched what started out as a fun social club with fellow criminal defense lawyers grow into a bonafide legal organization that is making an impact on the legal community.

In many ways MACDL looks a lot different today than it did in 2005: In 2005 we did not have a lobbyist or a Legislative Committee; these additions came about when Minnesota lawmakers were entertaining legislation to bring the death penalty to Minnesota. Because of Brock Hunter, our first Legislative Committee Chair; Kelly Keegan, our current Chair; Dan Knuth, our former lobbyist; Mark Hasse, current lobbyist and the entire Legislative Committee, MACDL has become a force to be reckoned with at the Capitol. MACDL not only helped stop the death penalty from coming to Minnesota, but we have played an integral part in forfeiture reform, expungement reform, veterans' laws and courts, and many other important bills.

The days of the County Attorney's Association sailing bills through the legislature are a thing of the past.

MACDL has always been known for its excellent fall CLE and that tradition continues; however, under the leadership of former Presidents, Faison Sessoms and Mike Brandt, and the CLE and Membership committees, MACDL has added free one-hour CLEs with happy hours. These events have been hugely successful, informative, and fun.

This year MACDL is taking its show on the road in an effort to provide support to members statewide. A full day CLE followed by a BBQ is scheduled in Duluth on July 17, 2015, a free lunch CLE was held in St. Cloud on June 24, and the CLE and Membership Committees are working on one-hour lunch or happy hour CLEs in Mankato and Rochester.

MACDL has always had a lot to offer socially and those opportunities have expanded by adding a softball team. MACDL has also added a New Lawyer Committee. This committee is working on a mentor/mentee program as well as special social events for lawyers who are new to the practice of criminal defense as well as law students.

And how about the MACDL Annual Dinner and Auction? We have always had the annual dinner, but the auction began in 2007 to help defray the costs of our many operating expenses, including the added cost of a lobbyist. For several years in a row we have had sold-out attendance at Annual Dinner and Auction. This event has been dubbed the "lawyer prom" and a night we all look forward to every year. With the hard

work of the entire Annual Dinner Committee, donations from the community, and all of you, this event has raised significant revenue so that MACDL can continue to offer many opportunities to its members, while keeping our dues extremely affordable. This success is further proof that criminal defense lawyers throw the best parties.

One opportunity that MACDL provides that is underutilized is the scholarships we award to lawyers who want to further their legal training by going to trial school or other CLEs. MACDL has scholarship money to give, so please submit an application. You don't have to be a new lawyer to take advantage of our scholarships.

This *Challenger* magazine is aptly named, as it is a challenge to publish several times a year. Editors have included Jim Ostgard, Aaron Morrison, and now Ryan Garry, all of whom are busy successful lawyers. The *Challenger* magazine provides a wealth of knowledge as the articles are written by some of the best and brightest MACDL members. One should receive CLE credit from reading the *Challenger*. By the way, the *Challenger* Committee is always looking for informative articles or interviews for its magazine.

MACDL's Amicus Committee has submitted Amicus briefs on important appellate cases, further imprinting our influence on the legal community. Just recently the MACDL Rules Committee has expanded its role by identifying outside legal committees that are making important legal and procedural decisions that affect the criminal defense bar and insisting on a voice in those decisions. Under the leadership of Jeff Sheridan, who is known for being the proverbial squeaky wheel, MACDL is sure to continue to assert its influence at all levels of decision-making.

Now that we have taken a look back at the past 10 years, I want to share my vision for the future. It is no coincidence that this issue of the *Challenger* is on diversity. MACDL has grown and changed a lot, but it is my Presidential initiative to diversify the membership of MACDL in three ways:

1.) Age and experience: we are trying to achieve this with the New Lawyer Committee by reaching out to new lawyers and law students by providing networking and mentor opportunities.

2.) Geographic Diversity: MACDL should be a relevant organization to criminal defense attorneys statewide. Currently our membership outside of the metro area is only at around 15%. We are working on establishing geographical sections of MACDL statewide and providing statewide CLE trainings. I recently spoke at the Range Bar Association meeting about what MACDL has to offer and to plug our Duluth CLE. Once I got passed the heckling, which is a right of passage at the Range Bar events, my message was well received. The Membership Committee and I will continue to expand our presence statewide.

3.) Gender and Racial Diversity: The percentage of female MACDL members is pretty good at around 30%, considering criminal defense has historically been a male dominated field of law. However, I would like to see an increase in female leadership in MACDL. I plan to continue to recruit more female members and female board members.

The percent of ethnically diverse MACDL members is abysmal at less than 5%. This is not only an issue for MACDL and in the State of Minnesota, but also a national issue. According to a recent article in the *Washington Post* by Deborah L. Rhode, "*law is one of the least racially diverse professions in the nation*." [1] As President of MACDL, I intend to work with our board and our members to create strategies for long-term expansion of ethnic diversity. At our June board meeting I proposed the creation

1 See: http://www.washingtonpost.com/posteverything/wp/2015/05/27/law-is-the-least-diverse-profession-in-the-nation-and-lawyers-arent-doing-enough-to-change-that/

of a Diversity Committee. This committee was established and will be lead by MACDL Board member, Katherian Roe.

MACDL has many goals for the coming year and beyond. We have 20 great board members, but we are all busy lawyers and cannot accomplish those goals without help. I challenge every member of MACDL to find a committee that interests you and to become an active member.

Thank you for the opportunity to lead this great organization. Let's make it a great year.

Carolyn Agin Schmidt

President of MACDL
Attorney at Law
5500 Wayzata Blvd.
The Colonnade, Suite 1025
Minneapolis, MN 55416
763-591-0552
763-591-1653 (fax)
caslaw@comcast.net
www.caslaw.net

Overcoming the Language Barrier

Robert D. Richman

Early in my career, I was appointed to represent a young Russian man who was charged with attempted auto theft. He did not speak English, and the South Boston District Court, where the case was pending, did not have any connection to Russian interpreters. Fortunately, working through the Russian Orthodox Church, I was able to find a motherly Russian woman from the community who agreed to work as my interpreter.

The police had arrested my client sound asleep in someone's car. When they removed him from the vehicle, they found that the ignition had been popped out of the steering column. My client insisted that he had simply spent the night in the car, but had not tampered with the ignition. He said that he had been planning to go to New York the next day, and had needed a place to spend the night.

The day before trial, while I was prepping my client for his testimony, I explained that I did not want him to volunteer anything about his plans to travel to New York since that created a motive to steal a car. As we worked through his testimony, I asked, "Why did you get in the car?" The interpreter translated, and my client gave his answer, which in his native tongue sounded like this: "Blah blah blah blah blah **New York** blah blah blah."The interpreter then translated his answer into English: "I had nowhere to spend the night, so I found an unlocked car and went to sleep in it."

Stepping out of our reenactment, I turned to the interpreter and said, "Wait a minute. I clearly heard him say "New York." A look of confusion passed over the interpreter's face. "But you said not to mention New York," she said. No doubt my interpreter would have made a more effective witness than my client, but she apparently had not fully grasped the limits of her role.

Perhaps our most important function in representing our clients is explaining to them the status of their cases. In order for our clients to be fully able to make informed decisions about whether to stand trial or accept a plea offer, the client must understand the evidence against him, his chances at trial, significant legal issues in the case, in federal court the sentencing guidelines, the likely sentence after trial and after a plea, the terms of a plea offer, potential defenses, the chances of acquittal at trial, and more. These discussion can be lengthy and difficult even when representing native English speakers. When dealing with clients who do not speak English fluently, they can be virtually impossible.

Interpreters are essential to bridge the language gap to make effective communication with non-native English speakers possible. There are several issues that counsel must keep in mind when representing clients who are not fully fluent. The first question is whether an interpreter is necessary at all in a given case. Many non-native speakers are conversant in English and can easily carry on a general conversation. Even so, counsel must be wary about whether the client's language skills are sufficient when dealing with technical terms like aggravating role, conspiracy, dismissing counts of the indictment, waiver of one's trial rights, motions to suppress evidence, and many others. A good rule of thumb is if you have

any doubt whatsoever about whether your client is fully able to comprehend the issues you need to discuss, err in favor of using an interpreter. Even if you are able to conduct early meetings without an interpreter, you may want to use one when, for example, reviewing the terms of a plea agreement or prepping your client to enter a guilty plea.

These same considerations are even more true when deciding whether you need an interpreter in court. There, the language employed may be even more obtuse, and the defendant may be nervous as well. He may feel more comfortable being able to address the court in his native tongue, even if he could do so in English in a less pressured environment.

I had a case with a Mexican client who was charged with assault in a federal prison. He spoke English beautifully, although he was not fully fluent. We did not use an interpreter during the trial until he took the stand. Then, even though he testified in English, I had an interpreter standing by in case he got stuck. I decided that his testimony would be more effective if he was able to communicate directly with the jury, but I wanted to have a fallback ready in case he found himself unable to express himself fully in answering the questions, particularly on cross-examination. I also elicited at the outset of his direct examination that he was not fully fluent and needed to translate the questions into Spanish in his head before he could answer, which is why, he explained, he might pause for a few moments before answering the questions. I wanted the jury to understand that my client was not testifying in his native language and not take his pauses as evidence that he was fabricating his testimony.

As the anecdote at the outset reflects, when working with an interpreter it is crucial to ensure that the interpreter understands that his or her job is simply to translate the words being spoken from English to the client's language and from the client's language back to English. The interpreter is not to explain, interpret, summarize, or do anything else to aid the process. That is the attorney's job. The interpreter simply translates the words. We are fortunate in the Twin Cities to have a number of certified Spanish language interpreters for whom this is second nature. They make themselves virtually invisible, simply providing the bridge from one language to another. When dealing with other languages, however, the interpreters may not be as experienced or maintain the same level of professionalism as a certified interpreter. In those situations, it is a good idea to explain to your interpreter exactly what his or her role is in the discussion.

When interpreting is working smoothly, the discussion should flow as follows:

Attorney (in English)

Interpreter (in foreign language)

Client (in foreign language)

Interpreter (in English)

Attorney (in English)

[Repeat as necessary].

The problem arises when the client looks to the interpreter for guidance or explanation. Not uncommonly, a client may feel a greater affinity for the person who speaks his own language than for you, his attorney. Then issues arise such as the following:

Attorney When did you first learn your brother was dealing cocaine?

Interpreter [translates]

Client (in foreign language) What does he mean by that?

Interpreter (in foreign language) He means when did your brother tell you he was dealing cocaine?

Client (in foreign language) Oh, not until after he got arrested.

Interpreter [translates]

Unbeknownst to you, the client, based on the interpreter's explanation, has answered a question that is different from the one you posed. The client may have first learned

that his brother was a drug dealer when his brother told him, or he may have discovered it months earlier when, say, he saw a delivery being made. The interpreter and client should never have direct communications of the sort illustrated above. As soon as that happens, you have been cut out of the exchange, and you no longer have any control over the conversation. It is up to you to stop the conversation and get it back on track whenever an exchange of that sort happens. The interpreter needs to understand that his role is to act as intermediary and nothing more. In the hypothetical above, he should merely translate, "What does he mean by that?" and let you provide the explanation.

Or, the client, rather than answer your question, may turn to the interpreter and say, "Can I trust this guy? I heard public defender's just try to get you to plead guilty." Again, the interpreter should translate that to you, not provide assurances to the client.

It is crucial that the interpreter understand that his role is to translate the client's words and nothing more. Sometimes the interpreter will provide translations along the lines of "he wants to know how much time is he looking at" or "he says he wasn't even there." Translations like that should serve as a red flag that your interpreter is summarizing rather than translating. The client did not use the words "he wants to know" or "he says," and so the interpreter shouldn't use them either. Whenever I hear translations of this sort I remind my interpreter that I want a verbatim account of my client's words, not a summary.

To facilitate this process, the attorney should make an effort to be clear and concise. It is not a good idea to be verbose when working with an interpreter. In addition, try to pause regularly to give your interpreter an opportunity to translate in bite-size chunks and encourage your client to do the same. When I hear my client run on for five minutes and the interpreter has not stopped him to translate, I have another red flag that the interpreter is summarizing, not giving me the word-for-word translation I want.

Although it is always best to use a professional interpreter, there are times when you have no choice but to rely on translation by a client's friend or relative. In that situation, not only do you have all of the issues addressed above, you have the added concern of protecting the attorney-client privilege. Counsel should explain the attorney-client privilege to the interpreter and emphasize that he or she is present at this meeting not as a friend, but solely to act as interpreter. As such, she is part of the defense team and the attorney-client privilege extends to her as well. Impress upon the interpreter that she cannot repeat to anyone anything said during the meeting. Of course, even then there are risks that counsel must be cognizant of in choosing what to discuss, but by clearly establishing that the conversation is protected by attorney-client privilege, counsel will at least have a basis to challenge the government's use of the conversation if the friend/interpreter is subpoenaed to testify in the grand jury or at trial.

An effective interpreter, one who merely translates each word into the appropriate language, creates a seamless exchange between attorney and client and bridges the gap created by the language barrier. Such an interpreter is worth his or her weight in oro (gold).

Robert D. Richman
Criminal Defense
PO Box 16643
Minneapolis, MN 55416
651-278-4987
robert.richman@gmail.com

Robert Richman is a criminal defense attorney specializing in federal crime.

Five Things Criminal Defense Attorneys Should Keep In Mind About Family Issues

Kristine Zajac & Ryan J. Briese

Defending a client on criminal charges carries enough pitfalls and issues to remember to address on its own. Even so, many criminal convictions can bring results that carry over into the defendant's family life resulting in unintended or unanticipated consequences. These five family law matters should be kept in mind throughout defending your client in criminal proceedings.

Termination of Parental Rights for Predatory Offenders

Beware if your client is facing a conviction that requires registration as a predatory offender under section Minn. Stat. section 243.166 and is a parent or ever hopes to be a parent. The recent provision under Minn. Stat. section 260C.503 requires that social services must ask the county attorney to immediately file a termination of parental rights petition when a parent has committed an offense that requires registration as a predatory offender. Under the statute the county attorney is given very little latitude to deviate from this requirement for filing the termination petition. While anecdotally few county attorney offices appear to be enforcing this provision, if your client ends up in a custody fight this provision could effectively end their chance at custody and potentially all parental rights.

Convictions Shifting the Burden of Proof in Custody

Minn. Stat. section 518.179 triggers a shifting in the burden of proof for clients seeking child custody or parenting time when they have been convicted of one of any number of crimes ranging from murder to prostitution of a minor, depriving another of parental rights to even terroristic threats. After such a conviction the person seeking custody or parenting time has the burden to prove that custody or parenting time by that person is in the best interests of the child. The court may not grant custody or parenting time to the person unless it finds that the custody or parenting time is in the best interests of the child. Further, if the victim of such crime was a family or household member, the standard of proof is clear and convincing evidence. A guardian ad litem must be appointed in any case where this section applies. This added burden of proof in an adversarial custody proceeding poses a seemingly insurmountable obstacle to your client obtaining custody.

Extension of OFP's After Violations

Although some criminal defense attorneys may not be involved in the actual defense of the Orders for Protection, they may find themselves defending a client accused of criminally violating an Order for Protection. A violation itself of an Order for Protection carries potential charges from misdemeanor through felony based on the alleged conduct of violation. However, the conviction and even admissions regarding the alleged violation of an Order for Protection still carry long-term consequences for the defendant even beyond the charges. If the client is convicted of a violation of the Order for Protection, or even if he admits on the record to a violation of the Order for

Protection without actual conviction, these facts may be subsequently used by the OFP Petitioner to extend the Order for Protection against your client for a time period of up to 50 years. These extensions of the Order for Protection have been upheld even where the underlying Order for Protection was entered without findings. See Rew v. Bergstrom , 845 N.W.2d 764 (Minn. 2014).

Clawing Back Property Settlements

If your client is being charged with fraud, theft, or the like, beware that transfers made to the defendant's spouse through dissolution may be clawed back pursuant to MUFTA, the Minnesota Uniform Fraudulent Transfers Act. The recent string of Ponzi-schemes has been accompanied by equally complex marriage dissolutions. However, the spouse looking to get out, whether innocent or not, may find escaping with his or her cut from the marriage difficult. The Courts have recently held that the MFUTA may be used to claw back property settlements and awards determined in dissolution proceedings for the innocent spouse. See Citizens State Bank N.Y.A. v. Gordon Brown, et al., A12-1257 (Minn. 2014) . Such actions appear more likely when the divorce appears to be one of convenience. Even so, the innocent spouse should be wary before spending that divorce settlement.

Innocent Spouse Tax Relief

Speaking of innocent spouses, an innocent spouse caught in tax fraud being committed by his or her spouse may be able to escape the usual joint and several liability from joint tax return filings. However, in the case of innocent spouse tax relief, the innocent spouse must actually prove their innocence, showing that they did not or should not have known of the fraudulent acts being committed by the spouse. This issue may pose particular problems for your clients as the traditional joint and several liability of joint tax returns gives the innocent spouse incentive to turn against the accused spouse. Such innocent spouse should be advised of the extended periods for claiming the innocent spouse relief to avoid such claims being filed during the pendency of charges against your client.

Ms. Kristine J. Zajac, Attorney

Ryan J. Briese

Zajac Law Firm
475 Grain Exchange Building North
301 Fourth Avenue South
Minneapolis, MN 55415
(612) 789-2300, (612) 341-0989 Fax
www.zajaclawfirm.com

Race and Implicit Bias in Jury Selection (aka the 1,000 Pound Elephant in the Room)

Karmen McQuitty

In a recent discussion on the MACDL listserv, an attorney asked, "Is it malpractice to not address race during voir dire if the client is a person of color?" It might not be "malpractice" but it is certainly irresponsible. To effectively advocate for clients of color at trial, we must address race in jury selection. Race is often a difficult topic to bring up—for white people—both outside and inside the courtroom. People of color do not have the same privilege of choosing not to address race. While this article is targeted to all defense attorneys, I hope white attorneys will take special note and use their privilege to more effectively advocate for their clients of color during voir dire. I hope to convince you that having an honest discussion about race will not only positively impact the outcome of your trial, but also help to break the shackles of racism that pervades our criminal "justice" system.

When representing clients of color, we often struggle with whether or how to bring up race. Judges ask questions such as "can you be fair and impartial to both parties?" Such questions do nothing to root out deep held, often unconscious, racist beliefs. We must dig deeper to explore deeply held messages and beliefs espoused by jurors. It is not enough to ask "do you have any African American friends?" or "do you think my [Black] client is guilty just because he has been arrested?" Jurors do not believe they are racist, just as we believe we are not racist.

Research about implicit bias has shown that individuals hold deep seated, unconscious beliefs about others based on race. Implicit biases are the plethora of fears, feelings, perceptions and stereotypes that lie deep within our subconscious, without our conscious permission or acknowledgement.[1] Implicit bias is formed by repeated negative associations—such as the association of a particular race with crime—that establish neurological responses in the area of the brain responsible for detecting and quickly responding to danger.[2] *Project Implicit* a program at Harvard University School of Law, has developed a tool to assess implicit bias—the Implicit Association Test (IAT).[3] The tool is available for free on-line, and I highly recommend taking it (if you are like me, you'll be disappointed in your results).

Implicit biases are based on either implicit attitudes—feelings that one has about a particular group—or implicit stereotypes—traits that one associates with a particular

1 Unraveling the Gordian Knot of Implicit Bias in Jury Selection: The Problems of Judge Dominated Voir Dire, the Failed Promise of Batson, and Proposed Solutions. Judge Mark W. Bennett. Harvard Law & Policy Review Vol. 4 2010, at 149

2 Id at 152, Citing Joshua Correll et al., Event-Related Potentials and the Decision to Shoot: The Role of Threat Perception and Cognitive Control, 42 J. Experimental Soc. Psychol. 120 (2006); Elizabeth A. Phelps et al., Performance on Indirect Measures of Race Evaluation Predicts Amygdala Activation, 12 J. Cog. Nuerosci. 720 (2000).

3 https://implicit.harvard.edu/implicit/takeatest.html

group. While implicit bias can relate to gender, sexual orientation or religion, much research has studied implicit bias as it relates to African Americans. "African Americans are stereotypically linked to crime and violence; their behavior is more likely to be viewed as violent, hostile and aggressive that the behavior of whites; and they are more readily associated with weapons that whites." [4] This has huge implications for our African American clients. In fact, research has shown that judges and juries actually "misremember case facts in racially biased ways."[5] Further, research has concluded that implicit bias impacts the way jurors react to assertions someone acted in self-defense, whether excessive force was used by officers, whether there is really a presumption of innocence, whether the jury believes that the defendant's decision not to testify is an admission of guilt, and juror perceptions of expert witnesses if they are a person of color.[6] Given the research, it is imperative that we explore race and more specifically, implicit bias, during voir dire.

Given how challenging race is to talk about, how do we approach the subject without alienating the jury or drawing an objection? First, we must understand our own implicit bias. Taking the IAT and discussing your results with colleagues and friends is a safe way to explore your own level of (dis)comfort. The more you talk about race and privilege outside of the courtroom, the easier it will be to talk about in the courtroom. Addressing race begins before the jury ever steps foot in the courtroom. Creating a motion in limine and jury instruction regarding implicit bias is probably the most effective tool we have to start the conversation. Judges will undoubtedly resist, but through a carefully crafted motion in limine that links the right to a fair trial with implicit bias research[7], it may be possible to sway some judges. At the very least, it brings the issue to light with the Court and creates a record for appeal.

Once the jury is in the box and questioning begins, it is critical to discuss race and implicit bias. I recommend framing the conversation in a way that takes juror fears into account. If the court (and prosecutor) will allow, frame your questions by talking about your own results on the IAT, and current research. I suggest asking questions such as, "growing up, what messages did you hear about [race of your client]?" "What did your parents and friends say?" These questions let jurors deflect appearing racist. Jurors often say "I heard nothing" or "We never talked about it." This is a clue that implicit bias is running rampant on your jury and that jurors have never consciously thought about race (BIG problem). Your job educating the jury about implicit bias just became mandatory. Framing questions that respond to research is an effective way to dig deeper. Asking, "Tell me your reaction when you hear that research shows people link African Americans to crime and violence and believe African Americans are more likely to be viewed as violent." Your job is to convince jurors that they too have implicit bias. Perhaps even telling them about the IAT will encourage them to go home and take the test. If you have a juror who has taken the IAT and knows about implicit bias, exploit their knowledge to educate the jury. While you might want to protect them from a strike to keep them on your jury, they will likely be struck anyway; and it is more important to have the conversation and get the remaining jurors thinking about implicit bias.

Advocates of addressing implicit bias in the courtroom are often skeptical of the effectiveness of *Batson* and push for an end

4 (Re)Forming the Jury: Detection and Disinfection of Implicit Juror Bias. Anna Roberts. 44 Conn. L. Rev. 833 2011-2012,

5 Justin D. Levinson, Forgotten Racial Equality: Implicit Bias, Decisionmaking, and Misremembering, 57 Duke L.J. 345, 391-95 (2007)

6 See note four at 837.

7 Email Karmen for a proposed MIL/JIG.

to preemptory challenges (moving to cause challenges only).[8] Such changes will require momentum and change at the legislative level, but we should be critical of the practices and ask ourselves if Batson really gets to implicit bias [no] and if preemptory strikes uphold the promise of the Sixth Amendment.

We can impact the outcome of our clients' case by addressing implicit bias in jury selection, opening argument, final arguments and in the jury instructions. The first step is addressing our own implicit bias and grappling with what it means in our lives, work and the case. Second, we must advocate for a jury instruction on implicit bias pre-trial. Third, we must have a well thought out strategy and series of questions to educate the jury during voir dire. Because implicit bias is pervasive, and we all have it to a degree, there is little benefit to trying to root out who the "real" racists are. We are all racist, it is just a matter of naming it and imploring jurors to challenge their own implicit bias when listening to testimony, evaluating evidence and deliberating. It is a matter of reminding jurors to keep the idea of implicit bias at the forefront of their minds as they decide whether the State met their burden. As defense attorneys we are the champions of our client's cause. It is up to us to make sure s/he gets a fair trial; the only way to do that is to talk about the 1,000 pound elephant in the room. And it just might make a difference in the outcome of your case and our entire "justice" system.

8 See note two at 166.

Karmen McQuitty is a criminal defense attorney at the University of Minnesota Student Legal Service and a former Ramsey County Public Defender. She is white, and works every day to challenge her own privilege and implicit bias.

Karmen McQuitty, J.D., M.S.
Senior Staff Attorney

University of MN Student Legal Service
160 West Bank Skyway
219 19th Ave. South
Minneapolis, MN 55455
612-624-7045
kmcquitt@umn.edu
http://usls.umn.edu/

A Few Words About the 2015 Annual Dinner & Auction

Piper Kenney Wold

The MACDL Annual Dinner was held on March 14, 2015 at Town & Country Club. MACDL presented a special "Profile of Courage" award to Bob Malone. Bob touched everyone with his heartfelt speech. MACDL honored Earl Gray with the Distinguished Service Award. There was much laughter as Earl talked about his many years as a criminal defense lawyer. Both men have truly battled on behalf of criminal defendants. Many thanks to both attorneys for sharing their stories.

The 2015 dinner was MACDL's most successful fundraiser ever. Approximately 300 people attended the event. MACDL raised over $45,000. Thank you to those who sponsored the event and donated auction items. The success of this event was due in large part to Carolyn Agin Schmidt, MACDL President and Co-Chair of the Annual Dinner & Auction. Carolyn worked tirelessly to ensure that this year's dinner was even more successful than the last. Paula Brummel and the entire Annual Dinner Committee also worked very hard to ensure that the evening ran smoothly.

Next year's event will take place on **Saturday, March 12, 2016**. As Carolyn explained in her article, the MACDL board continues to work to improve and expand benefits to its members. As the largest MACDL fundraiser, continued success of the Annual Dinner is vital to the future of MACDL.

Thanks to you, the 2015 Annual Dinner was a spectacularly successful evening. With your help, the best is yet to come!

Piper Kenney Wold

Co-Chair, MACDL Annual Dinner & Auction

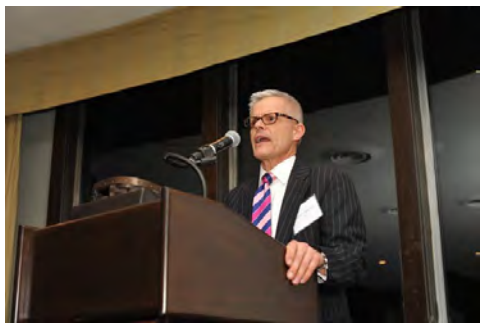
MACDL Annual Dinner & Auction 2015















MACDL Annual Dinner & Auction 2015















MACDL Annual Dinner & Auction 2015















MACDL Annual Dinner & Auction 2015















MACDL Annual Dinner & Auction 2015







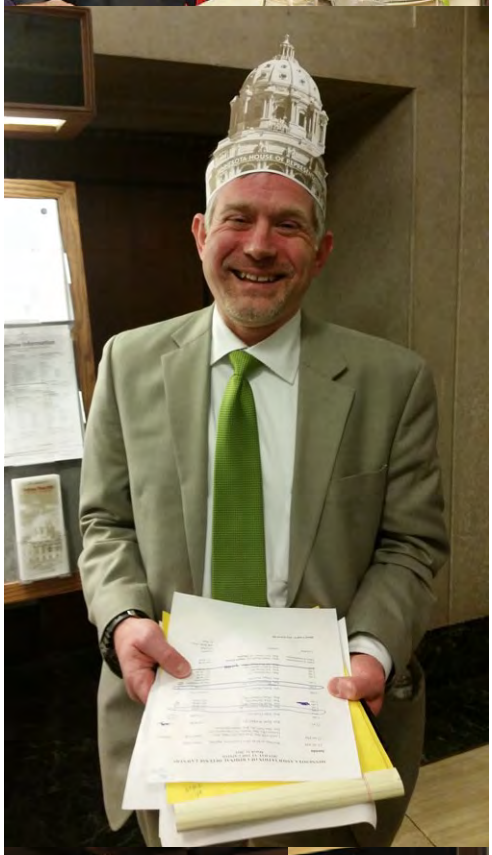








MACDL Annual Dinner & Auction 2015



Cross-Cultural Representation of Native Americans in the Judicial System

AFD Shannon Elkins

Respect and *fairness* are not the words that come to mind for many of the people of Red Lake, White Earth, Bois Forte and Leech Lake when talking about justice and the law. Undoubtedly, distrust for government officials goes back generations and likely started when the federal government began interpreting treaties and usurping tribal rights. But there is a modern distrust directly tied to the criminal justice system that creates a barrier between a defense attorney and a Native American client.

Having represented many Native Americans in state and federal court as a public defender … that's always the first hurdle. I'm viewed as part of "the system." Although the State Public Defenders are independent and the Federal Defender's Office is part of the judicial branch, these distinctions matter very little. Many people from Minnesota's tribes have been treated poorly by local or federal law enforcement and I'm initially considered to be as untrustworthy and inadequate.

Needless to say, representing a person who is inherently distrustful of you is no easy task.

Perhaps that's why D.B. didn't disclose her prior rape to me for months.

Me, a seemingly privileged white woman with a law degree from the Twin Cities always carrying multiple files. How could I possibly understand? Was I a hack? Too busy or lazy to care? Too self-absorbed? I can only imagine what thoughts might have been racing through her mind. She was stuck with me whether she liked me or not.

Like many of my Native American clients, I tried to win her trust by spending time with her and listening. I wanted her to know that she could trust me and that I would help her. I was her first lawyer, but this wasn't her first contact with the criminal justice system, and she'd been shown no compassion in the past.

She'd reported her rape to law enforcement in Bemidji seven years ago. She underwent a sexual assault exam, gave the police the name of her perpetrator, and provided the address of where she was assaulted that morning. But the case was never investigated. The man was never arrested. And D.B.'s case was closed without her consent. She was angry, and with good reason.

D.B.'s prior contacts with law enforcement and the judicial system also involved her cousin who was repeatedly beaten by her boyfriend. D.B. had witnessed a few of the assaults, but had seen the bruises and heard about many more. Despite speaking to the police and giving witness statements on various occasions, nothing ever happened to the man. Finally, the man raped D.B.'s cousin who then fled to D.B.'s house where she called the police. Again, the man was never arrested.

Thirty days after her cousin's rape, D.B. stabbed her cousin's boyfriend seven times killing him in his own kitchen. He had attacked D.B.'s cousin again and went after D.B. when she tried to intervene.

In truth, her frustration and anger were truly something I could never fully comprehend. I am privileged and our lives had crossed from two very different paths. But I listened and I cared, and she grew to trust me.

Although Red Lake, White Earth and Bois Forte Indian Reservations have strong communities and strong commitment to their families – the distance from the reservations to the Sherburne County Jail leaves most of our Native American clients isolated from the worlds they know.To exacerbate the problem, family visits are done by video and seeing a mother, brother or their own children over a grainy television screen is often more saddening than no visit at all. Many families never make the five or six hour trip.

The exorbitant cost of phone calls from the jail also means that their defense attorney may be the only person they talk to "on the outside." To compensate for their isolation, I stay in contact with my clients' relatives and bring news from the reservation to share when I visit. Trips to the reservation with an investigator to meet the client's family, see where they live and to talk to witnesses helps to create a bond with my clients. It gives me a connection to their world and a better understanding of where they are from. I'm not sure if there is a much better way to understand a person than to spend a few hours in their childhood home talking to their family. For better or worse, it gives you insight you wouldn't otherwise have.

When a client from a reservation is out of custody, it can be even more difficult to win their trust because they are so far away from the Twin Cities.

When 65-year-old L.R. was indicted for selling walleye to someone other than the Red Lake Fisheries, he was dumbfounded. The fishery itself ran its own operation, and L.R. wasn't a big time fisherman. He didn't fish with nets and usually went out alone. He was allowed to fish with several lines and doing so, he could easily catch his limit on a good morning.

But a sting operation involving undercover agents targeted L.R. because he sold fish to a farmer friend who introduced him to an undercover agent. Thus, in an undercover bust, L.R., a former veteran and 65 year old man with no criminal record, was taken to the ground at gunpoint and driven to an isolated location where he was questioned for hours.

When I met L.R., he was angry and rightfully so. He had been a law abiding citizen of the Red Lake Indian Reservation and had served the United States in Vietnam; but that didn't matter to the U.S. Fish and Wildlife agents who "took him down." He was disrespected and treated poorly.

He had been fishing on Red Lake since he was a small child and considered it his absolute right to fish and to sell his limit to whomever he wanted without the federal government getting involved. He was not pleased to have a "federal" lawyer, but over time he began to accept me. I think my anger and outrage at the way he was treated helped. Empathy and a thorough cross-examination of those officers at the motions hearing helped too.

Prior to the motions hearing, I visited L.R. on the reservation to see his fishing boat that lacked any marks or evidence of netting fish and I met him in a hotel conference room in Bemidji to go over his recorded statements and the recordings from the undercover agent's wire.

Time was all it took. L.R. grew to trust me. So although our two worlds were brought together under strained circumstances and inherent distrust, there was a quiet, appreciated understanding that developed.

In a recent murder trial involving the White Earth Indian Reservation I called my client's cousin to testify. She had seen my client a few minutes after he allegedly murdered his girlfriend and she testified that he was high out of his mind. She said the

county sheriff's deputy who arrived badgered him and questioned him repeatedly before the deputy turned on his recorder. When the government, in their cross-examination, asked her why she didn't confront the deputy about his behavior and why she didn't tell other officers about it that very day, she scoffed. She squinted her eyes at the prosecutor and said – "When you're from the reservation, you don't talk to the police … it doesn't do any good … and they don't believe anything you say anyway. It's better just to keep quiet."

My investigator, who has worked on reservation cases for years, mentioned the testimony to me later. Of course we both knew that this was the general feeling about law enforcement on the reservations, but the prosecutor clearly had no idea.

Working in the federal system is challenging, but the reservation cases can be very rewarding. Even after a case has ended or a person goes to prison, the families and clients typically keep in touch. They call and check in or stop by our office. They know our reservation investigator by name and speak of him fondly. I work with some very compassionate and amazing people and I'm proud to call them my colleagues.

Many of the attorneys in our office have a token of appreciation given to them by a family member or previous client from a reservation case; a dream catcher, a drawing, a feather, a pair of earrings, a card. The gifts themselves are treasured, but what they represent even more so – trust, fellowship, and mutual respect.

I don't pretend to completely understand the experiences of the people who come from Red Lake, White Earth, Leech Lake or Boise Forte, or any other tribe, but I listen. I care. I visit their homes. And I talk to their families. It's my attempt to understand their experience, if only a little.

Shannon Elkins
Assistant Federal Defender

107 U.S. Courthouse
300 S. Fourth Street
Minneapolis, MN 55415
612-664-5858

* AKA, Rock Star

A Brief History of Batson and How to Use It

Jean Brandle

African Americans were tried by all white juries until 1880 when the United States Supreme Court ruled that African American citizens could be selected for jury service under an equal protection analysis. *Strauder v. West Virginia,* 100 U.S. 303 (1880). Thereafter, prosecutors used the peremptory challenge to exclude people of color from juries. In 1965, the Supreme Court ruled that racially biased peremptory challenges were a violation of a defendant's right to equal protection, but the Court set such an impossibly high standard for proving discrimination that it was a pyrrhic victory. *Swain v. Alabama*, 380 U.S. 202 (1965). The *Swain* challenge was difficult for defendants to win because the objection had to be based on a pattern of discrimination by the state as a whole, not related to one prosecutor in a particular case at bar.

Finally, in 1985, the Court ruled in *Batson v. Kentucky* that the individual facts of a particular case could be used to establish racial discrimination by a single prosecutor during jury selection. The *Batson* court established a three part test which, though better than it was, is still difficult to prove. Justice Marshall, in his dissent, argued: "[t]he inherent potential of peremptory challenges to distort the jury process by permitting the exclusion of jurors on racial grounds should ideally lead the Court to ban them entirely from the criminal justice system." *Batson*, p.1728. Justice Marshal believed the peremptory challenge was an important tool, but he also believed the right of a defendant to have a race-neutral jury was more important than the right to use peremptory challenges. *Id.*, at 1729.

Since *Batson*, the Supreme Court has determined a defendant can challenge a racially biased peremptory challenge by the prosecution even if the excluded juror is not the same race as the defendant. *Powers v. Ohio*, 111 S.Ct. 1364 (1991). One interesting portion of the *Powers* analysis was that it expanded upon a single line in the Batson case regarding the constitutional right of people of color to participate in the jury process: "[t]he State's discriminatory use of peremptoriness harms the excluded jurors by depriving them of a significant opportunity to participate in civil life." *Powers*, at 1365, citing *Batson*, at 1712. The Powers court recognized that a juror dismissed on the basis of race would not "possess sufficient incentive to set in motion the arduous process needed to vindicate his or her own rights." *Id.* The right of jurors to participate in the civil process is an important, but subtle portion of the *Batson* argument because attorneys who raise *Batson* challenges are protecting not only their own client's right to a fair jury, but the juror's right to participate.

The Minnesota legislature expanded *Batson* to include gender discrimination along with race discrimination in jury selection. Minnesota Rules of Criminal Procedure Rule; 26.02 Subd. 7. It should also be noted that prosecutors can raise a *Batson* challenge against defense attorneys. As such, it is important to make sure you have a race-neutral reason for striking each juror.

The peremptory challenge is, in itself, an homage to discrimination. Each attorney is allowed to use his or her own personal, perceived or professional prejudices to exclude jurors whom the attorney believes

will not be favorable to her or his client. So, how do you use Batson to your client's advantage and prevent the prosecution from creating an all-white jury?

Batson established a three-part process which has remained essentially unaltered for the past 30 years and is virtually the same in the Federal and Minnesota state courts. My personal suggestion is that you raise a *Batson* objection when the prosecutor strikes the first non-white juror. Although you are unlikely to win that particular objection, it puts the prosecutor on notice that if she strikes a second non-white juror, you are going to raise another *Batson* objection and she will have to come up with an even stronger argument because the judge will be more skeptical about her excuses. When you raise a *Batson* argument right away, the prosecutor is less likely or at least more cautious about striking the next non-white juror. If you wait for the prosecutor to strike the second person of color before you raise *Batson*, you will have lost two jurors before you start to have any traction on that issue.

The three-part process in Minnesota State courts is as follows: first, the attorney raising the objection must "make a prima facie showing that the responding party exercised its peremptory challenges on the basis of race or gender." MRCP, Rule 26.02, Subd. 7, (3)(a). Second, if a prima facie showing is made, "the responding party must articulate a race- or gender -neutral explanation for exercising the peremptory challenge(s)." Subd. 7, (3)(b). Third, if "the court determines that a race- or gender -neutral explanation has been articulated, the objecting party must prove that the explanation is pretextual." Subd. 7, (3)(c).

The remedy for a judge overruling the objection is that the juror is allowed to be excused. But if the objection is sustained, the court must allow the juror to remain on the panel or must discharge the entire panel and start over, depending on what is in the best interest of the parties. Subd. 7, (4).

The biggest problem with *Batson* challenges is that the prosecutor can usually create a somewhat viable excuse for striking a non-white juror and it is difficult to establish a pretext. One of the best ways to show pretext is to compare certain qualities or characteristics the stricken non-white juror shares with white jurors the prosecutor did not strike. As in all aspects of trial work, success is about thinking on your feet and being adamant in your position. Make sure the entire process is recorded out of hearing of the jury, but on the record for your appeal.

Unfortunately, though there is a clear process set forth for challenging racially motivated peremptories, the application of *Batson* is weak at best. For example, the Minnesota Appellate and Supreme Courts seem to have universally affirmed district court denial of *Batson* challenges by defendants, but in the one case where a prosecutor challenged a defense attorney for a racially motivated peremptory against an African American juror, the district court granted the challenge and the Supreme Court affirmed. *State v. Reiners*, 664 N.W.2d 826, 835-838 (Minn. 2003) Of note, Justice Page wrote a long, angry dissent in *Reiners*, which is too lengthy to include in this article, but is well worth reading. We may not win these objections very often, but it is absolutely worthwhile to keep making them.

Jean M. Brandl
Brandl Law, LLC
310 Fourth Ave. S., Ste. 5010
Minneapolis, MN 55410
612-206-3773 p/f
612-723-1321 cell
Jean@BrandlLaw.com

From my view . . .

Deborah Ellis

Reflecting on over three decades as a lawyer, I never would have imagined I would, at one point in my career, be the lone female doing exclusively private criminal defense work. As I recall, when I attended law school at William Mitchell, forty percent of my law school class were women. I felt on equal footing with my male colleagues. Stepping into the courtroom in 1983 was a different story. The trial court judges were predominantly elderly white men who often treated me like a little girl, though I was 32 years old. Rather than referring to me as counselor, their paternal mind set was reflected in their choice to refer to me by the cute diminutive "Debbie" as in: "You don't really want a trial, do you Debbie?"

The look of the judicial bench in the 1980s was of males close to retirement (judges were not appointed in the 30s or 40s back then), and very few female judges. During my three pregnancies and child rearing years I felt the judges looked at me with a view of: "Good luck with that . . . [lawyering and mothering] That's your problem." (My impression was that they mostly had stay-at-home wives.) Understandably, it never occurred to me to mention any scheduling issues, a need to leave to pick up a child or to adjourn early to attend a school event.That type of request was unheard of. The first time I recall any courtroom professional mention a child care issue to a sitting judge was when a federal agent took the stand at about 1:30 p.m. to testify for a half hour and proudly announce to the magistrate he needed to pick his child up from the bus stop that day and he wanted to make sure he was off the stand by a 4:00 p.m. The magistrate beamed at the large DEA agent and signaled his delight at such an attentive father. So perhaps it was actually men who started the permissive trend to mention family scheduling issues in court (because their wives were working too).

My most vivid recollection of an inconvenience my motherhood presented to the courts was when my third child was born. I had a sentencing scheduled in Hennepin County at 9:00 a.m. At 6:00 a.m. that morning I realized I was in labor. I called my partner Douglas Thomson to ask him to appear for me because I was on my way to the hospital to give birth. "Are you sure?" he asked. Yes, I was sure. I had my baby girl Elizabeth at 9:00 a.m. At that same hour, Doug was explaining to the court and opposing counsel that he was filling in for me because I was having a baby. The victim/witness advocate muttered,"that figures" as if I deliberately went into labor that morning in order to obtain a continuance. The sitting judge granted a one week continuance. So, I dutifully appeared for sentencing one week later. My husband was in the hallway with our newborn in the portable car seat. What struck me was the lack of acknowledgment or congratulations that I had just given birth. No one commented on my court appearance (after all I was one week late) or mentioned, much less congratulated, me on my new

baby who was right outside the courtroom. Motherhood was merely an inconvenience to the court.

The male-dominated climate of litigation practice caused me to strictly compartmentalize my work and home life. Maybe that was not a bad thing. I also had to have back up plans B and C. Things started to change when job sharing positions and part-time lawyers appeared in prosecutors offices. I recall one prosecutor protesting about an evidentiary hearing being scheduled for a Thursday and Friday. She definitively declared, "I don't work Fridays." (Then she added that perhaps her in-laws could take her children for the day.) Since I did not work for the government, I didn't have that flexibility and I highly doubt that I could have told a judge that I didn't want a hearing on a Friday for family reasons. This critical difference between private and governmental practice remains, and continues to impact female lawyers. I think that more female lawyers work for government offices as prosecutors or defenders than work in private defense because of the increased flexibility and availability of back up in government positions.

However, over the years that I have been practicing law, I have seen a significant change in gender diversity in the courtroom. The judicial branch now looks more like my law school class - roughly 40% female. Judges no longer hold a courtroom of people until 5:30 or 6:00 to suit their own schedules. Judges ask their staff and counsel whether it would be all right to go an extra fifteen minutes or if anyone would be inconvenienced. There is universal acknowledgment that people have lives outside the courtroom. This may be attributable to the Task Force on Gender Bias headed by Justice Rosalie Wahl in the late 1980s, and to unions (I was told that a union contract required one courthouse be closed at 4:30) and to gender diversity both on the bench and in the courtroom and to women just speaking up.

Now it is not uncommon to have females on the bench and also representing both parties. Courtroom practice has been diversified. The private practice legal sector, however, still seems to lag behind. Female lawyers in civil law firms are not as likely to be on the partner track as their male counterparts. Female lawyers in private practice are fewer and we still remain outside the "old boys network." We have not gained equality but we are getting closer. The changes I have seen evidence a more family-friendly, female-friendly and people-friendly legal community. The new girls network, where I am no longer a loner in private practice, is small but strong and growing!

Deborah Ellis
Ellis Law Office
Trial Lawyers
101 East Fifth Street
Suite 2626
St. Paul, MN 55101
Phone: 651-288-3554
Fax: 651-293-0993
email:deborahellis2626@gmail.com

Cross Cultural Issues in Representing Clients in a Terrorism Case

— a Perspective from Manny Atwall

"Ms. Manny, umm, can you wear pants and a long-sleeved shirt when you visit my parents?" I joked "What, should I wear a head scarf too? Kamal shrugged his shoulders as if to say, maybe.

I met twenty-four year old Kamal Hassan in January 2009. Kamal had just arrived back into the United States from Yemen, having first traveled to his native Somalia in 2008 to join what he viewed as freedom fighters, but what the United States government calls a terrorist organization. Kamal was in the first wave of Minnesota-based Somali youth to join the cause.

Within the first five minutes of our first meeting, I knew the only way Kamal was going to trust me was to win over his family - his parents and six siblings. What I did not anticipate was having to win over the community leaders before the family would give me the time of day.

As lawyers, we know the family's involvement in our client's case can be both a complication and an advantage, oftentimes simultaneously. Few experiences illustrate this better than a "family" meeting that includes the parents, aunts, uncles, tribal leaders, Imams, and community advocates, amongst others.

So I took Kamal's advice and wore a pantsuit to the first meeting. Being a woman of color and speaking "non American" helped too. Right away, the community leaders began discussing their favorite Bollywood stars.

The conversation turned to the community's belief they were being targeted by the government. Particularly after the 9/11 attacks, Muslims have found themselves on the receiving end of widespread suspicion, if not outright discrimination. I began to realize that Kamal and his family expected that I would speak up for their entire community. I found myself traveling to community centers to discuss the American legal system. It had to be done. Building trust with the community was too important.

So how far should an attorney go to respect the client's religious and cultural beliefs in order to facilitate a relationship? Former Cook County Public Defender Cheryl Bormann went so far as to wear traditional Muslim clothing while representing a Gitmo 5 client. In an interview with the *Chicago Tribune*, she explained "My client has never seen my hair, has never seen my arms, has never seen my legs." I knew from the first day I met Kamal, relationship-building would be difficult, and I needed to do whatever it took.

During the months that followed, I read about Kamal's religion and culture. I realized the family dynamics were very similar to my own. All decisions had to be vetted by the family. Even as an adult, Kamal could not do whatever he wanted. He needed the permission of his parents and community leaders.

I began educating myself on the Qur'an and Hadith literature. Having a basic knowledge of both helped me communicate with my client and his community. I needed to acknowledge the critical role of Imams, whom many Muslims consult in times of distress. The family insisted Imams be present at meetings, and Kamal's brother warned me that making eye contact (with a person of the opposite sex) can be considered rude. Shaking hands with someone of the opposite sex as well. I learned never to take the initiative on such matters, and instead took my lead from the individual with whom I was meeting.

The hardest task was explaining the attorney-client privilege. The community leaders wanted to know the evidence, what Kamal had said, and the government's position. Kamal's father supported the information being made public to all. Each time I explained I could not discuss the case, I felt like they saw me as a part of the prosecution team. They thought I must be hiding something or working with the government to make sure Kamal went to prison. It took over a year for the family and community to understand why I couldn't share everything.

In my most recent case of this ilk, the relationship with the client and his family has been much smoother. The family is much more accepting of western clothing, and comfortable with a female attorney. The father shakes my hand, and the client has turned to hug me more than once. Even so, educating the family on the legal system remains a difficult task. All the more so when the results of any particular hearing are unpredictable, and the rules seemingly change from moment to moment. But I have confidence that–with time, effort, and genuine effort to understand my client's culture and rules—they will come to understand and accept the court's culture and rules in turn.

"One more thing, when my mother offers you food, eat it, please." That was my favorite "rule" that Kamal taught me. Who can refuse good food?

Manny K. Atwal has been an Assistant Federal Defender for the District Minnesota since 2001. Manny graduated from William Mitchell College of Law in St. Paul, Minnesota in 1997. After graduation, she started her legal career at the Ramsey County Public Defender¹s Office. She has been an adjunct professor at the former Hamline School of law and has taught seminars in all four Minnesota Law Schools as well as around the country.

Manny K. Atwal

US Courthouse 107
300 South Fourth Street
Minneapolis, MN 55415
Phone 612-664-5858
manny_atwal@fd.org

Interview of Judge Leonardo Castro

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Interview taken by attorney Daniel Guerrero

DG: I'm here today with Judge Leonardo Castro in his chambers in St. Paul. Let me just ask you initially Judge, where are you from?

LC: Well, I was born in New York City in Brooklyn. I was raised by a single parent with five siblings. At about age ten my mom moved us to Chicago, so I spent my formative years in Chicago. After high school, I left Chicago and joined the service.

DG: Is your family from Puerto Rico?

LC: My mother and father are both from Puerto Rico, they met in New York. They both came from Puerto Rico in the early 50's and met in New York City.

DG: How important or prevalent was the Puerto Rican culture in your childhood or as a young adult?

LC: It was extremely important. I grew up in the Williamsburg neighborhood of Brooklyn. At that time it was predominantly Hispanic, mostly a Puerto Rican and Jewish neighborhood. When we moved to Chicago, we lived in Humboldt Park, which is a predominantly Puerto Rican neighborhood. As a matter of fact, I went to Roberto Clemente High School. As you probably know, he was a Puerto Rican Baseball player who died in 1972.

DG: Sure, and did you speak Spanish growing up?

LC: Yes, I spoke Spanish at home. My mother did not speak English. She actually speaks very little English today. She understands it all but we've always lived in a community where we went to church or to the store where everybody spoke Spanish.

DG: What in your upbringing made you want to become a lawyer?

LC: I don't know if there was anything in my upbringing that made me want to become a lawyer. I didn't have any contact with attorneys or the court system or anybody in law enforcement really. After joining the military, I decided to take college classes and one of the college classes I took, I wrote a paper on white collar crime and in the corner of the paper when I received it back the professor, she wrote, "Have you ever considered going to law school?" And that really was the impetus for me to even have the idea that I could go to law school and become a lawyer, let alone a judge. And I went to the library, picked up the LSAT book and reviewed it a few times and decided to go to law school after I took the exam.

DG: And you were in college when you wrote this paper?

LC: I was going to night classes while I was in the military. The Air Force had a program where they contracted with four different colleges. They would bring professors to the sites to teach a class or two during a particular semester. I ended up getting my degree from the University of Maryland.

DG: Where did you go to Law School?

LC: I went to Northern Illinois University, which is about 60 miles west of Chicago.

DG: What brought you to Minnesota?

LC: Work frankly. After law school… well during law school I wasn't quite sure what I wanted to do. I received my undergraduate degree in business administration and thought perhaps something in the business world was appropriate for me. It didn't take me long to discover that business really wasn't where either my strengths lied or where my interests lied. It took me a little longer to find out what I wanted to do. It wasn't until my third year in law school that I took an internship at a Public Defender's Office, where I realized it was consistent with my skills and what my values were as far as helping people that needed help and being in a courtroom.

DG: Eventually you became the Chief Defender in the Fifth District?

LC: Yes, in 1994 I was appointed Chief Defender in the Fifth District. I stayed there for about seven and a half years. Before that, I was an Assistant Public Defender in the Third District. Following my tenure as Chief in the Fifth District, I became the Chief Public Defender in the Fourth District for eight years.

DG: What counties does the Fifth include?

LC: Fifteen counties in the southwest part of the state, including cities like Mankato, New Ulm, Marshall, Worthington, and Fairmont.

DG: What was the racial make-up of the **indigent** clientele in the Fifth District?

LC: I would say outside of counties like Watonwan and Lyon County, but in cities like Worthington and St. James, there was a significant mix of folks in the court system as public defense clientele.

DG: Were there a lot of Hispanic clients?

LC: Yes, particularly in the cities of Worthington and St. James. Those cities both had a large Hispanic population, and thus clientele.

DG: During your years in the Fifth District, was there any diversity on the bench or even within the lawyers practicing in the district?

LC: No there wasn't. There wasn't much and frankly, it's not that easy to get lawyers with color to move out to greater Minnesota. I made concerted efforts to recruit attorneys with diverse backgrounds, it was difficult. When one could choose being in the metro area or to be in a place closer to home, that always seemed to be the more attractive choice to younger lawyers than being out in greater Minnesota area, but we made efforts. I think that the bench, I believe, was primarily made up of 16 or 17 judges at the time in the Fifth District. I think there might have been two or three women judges and the rest were men.

DG: Of course now we have Judges Garcia, Lamas, Hoyos, Bartolomei, Chou and Moreno in Hennepin County, and in Ramsey County we have you, Judge Rosas, Bryan, and Ostby, and now Peter Reyes on the Court of Appeals, we've come some distance in achieving Hispanic diversity on the bench since the day when I remember there was

just Judge Gomez sitting in Hennepin County. What do you think accounts for that?

LC: Well, I think first of all, there are more of us with more experience. I also think there's been a concerted effort by the Governor's Office, the judicial selection committee, and the Minority Bar Associations to educate lawyers of color of the process of becoming a judge and the distinct possibilities of becoming a judge if one is interested. All of that has helped, but I think the last three governors have made efforts to increase diversity on the bench. I don't want to say just the last three governors, I guess since I've been here, I know that the governors that I worked with on the judicial selection commission made efforts in that regard.

DG: Now were you on the commission?

LC: I was. I was during both the Ventura and Pawlenty administrations.

DG: Did you attempt, as a member of the commission, to recruit lawyers of color to apply for judicial appointments?

LC: As a matter of fact, the statute requires the commission to do outreach, and both during the Ventura and Pawlenty administrations, the chairs of those commissions while I was a member, made it one of their priorities to reach out to particularly the bars of color, to make presentations to those groups, to have Q&A's with their members in an attempt to increase the application rate of attorneys of color.

DG: Since you've taken the bench in Ramsey County, have you noticed any positive perceptions or reactions from individuals of color who have come before you on the bench and who see your Hispanic surname.

LC: I don't know if I can say that I've experienced a positive reaction. I think it's more of a sense of relief than a positive reaction from the folks that appear in front of me. You know, I do have the occasional defendant who wants to speak to me directly in Spanish but for the most part, I think it's a sense they feel more comfortable in the courtroom.

DG: Do you see areas of improvement for racial diversity on the state and federal benches here in Minnesota?

LC: Yes, there is no doubt about it. Lawyers of color need to continue to apply for those judicial vacancies. They need to continue to involve themselves in the types of community and leadership activities that move them toward the bench.

DG: As a trial judge, you've undoubtedly had occasion to deal with the issue of race in jury selection. Do you have any suggestions or advice for lawyers on how to handle the sensitive topic of race in Voir Dire?

LC: As you say, issues of race are sensitive and can be difficult to address. I think jurors for the most part want to come here to do the right thing. My experience has been that people have been quite candid depending on how you phrase the question and how you explain the processes to them. They've been quite candid about their feelings. Now, I've had others who have talked around the idea. For instance, I'll have a juror that says something like, "the East side of St. Paul isn't what it used to be." You know you try to probe cautiously into what they mean by that. For the most part, I think people are particularly candid. I think lawyers should not be afraid to address the issue. I think it's important that they do, of course depending on the circumstances. There are a variety of ways to get to those responses without

getting people to shut down.

DG: I think this could certainly depend on how the lawyer comes across with the individual, whether they feel comfortable or conversant with those particular topics themselves.

LC: I think that's true.

DG: Now you're still a relatively young man. Do you see yourself retiring as a State District Court Judge or maybe this is a sensitive question in itself. Would you like to put your name in the hat for an Appellate Judge or even a Federal District Court Judge at some point before you retire?

LC: Well, let me tell you that I really love what I do now. Being a trial court judge in Ramsey County is a real satisfying job. I have an opportunity to affect persons' lives in a positive fashion and to work with some really excellent judges as well. The job is more than I thought it would ever be, frankly. I enjoy the job, I have pleasure coming to work, so right now this is where I'm at, and this is what I enjoy. And, if the people of Ramsey County think it appropriate to keep me here, and I hope they will, this is where I'll be.

DG: Good answer. Thank you very much Judge.

LC: You're welcome.

MACDL Challenger
P.O. Box 580058
Minneapolis. MN 55458

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