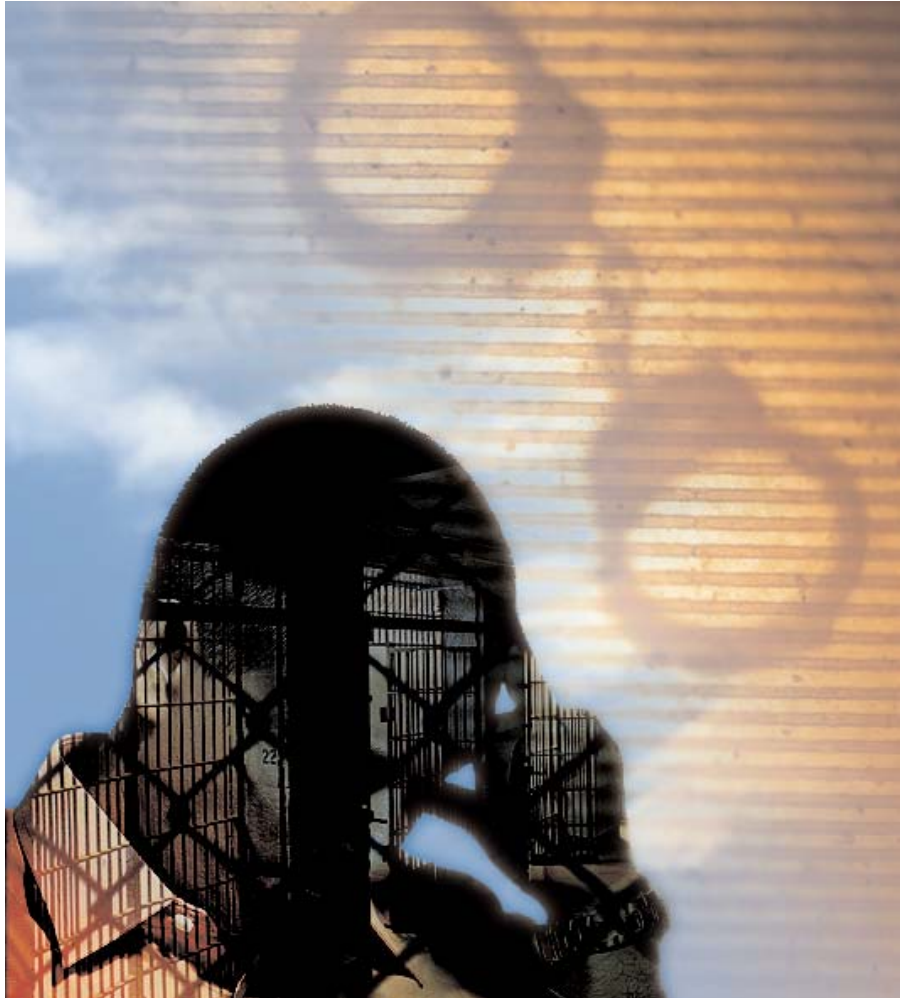


THE RIGHTS STUFF

QUARTERLY PUBLICATION OF THE MINNESOTA DEPARTMENT OF HUMAN RIGHTS • APRIL 2009

Expunging Criminal Records

Should an arrest or conviction remain on one's record for years? Decades? A debate over the need to help ex-offenders rejoin society and the requirements of public safety heats up.



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As I See It



Bullying and the Minnesota Human Rights Act

There has been much written of late about bullying. When most people think of bullying, I suspect they tend to think of it as the classic kind of behavior Biff Tannen displayed toward Marty McFly in the Back to the Future movies. No one really liked Biff, and we cheered when first George McFly got the girl, Marty McFly's dilemmas were resolved and in the end, Biff got what he deserved. But in reality, it is often not that dramatic, and not every victim gets to see their bullying resolved in 90 minutes, or over the course of two sequels.

Bullying is behavior perpetrated by an abuser who is bigger, stronger or dominant in some other way over his victim. It can occur in one incident or in a series of incidents. It can range from malicious teasing to physical assault. The perpetrator can be one person or a group of people. The victim can be one person or a group. Depending on who the perpetrator is, he or she can confer liability for their bad behavior onto their organization. Sadly, there have been many times in recent history when bullying was a precursor to death for one or more victims.

Depending on the nature and seriousness of bullying behavior, it is harassment and it can be a violation of the Minnesota Human Rights Act. Bullying behavior that increases



Commissioner Velma Korbel shares her point of view on a variety of topics in this blog

to harassing behavior is never welcomed by a victim. When unwelcome verbal, non-verbal, or physical behavior is so severe and pervasive that it interferes with an employee's work or a student's learning, it poisons the environment and puts the victim in a situation where he or she cannot be expected to thrive. When this unwelcome harassment creates an intimidating, hostile, or offensive environment, and is based on one of the protected classes in the Minnesota Human Rights Act, the bully/perpetrator is breaking the law.

The Minnesota Human Rights Act makes it illegal to harass a person because of his or her race, color, creed, religion, national origin, sex, marital status, status with regard to public assistance, membership or activity in a local human rights commission, familial status, disability, sexual orientation, or age.

Some examples of harassing

behavior are listed below.

- Jokes or insults
- Flirting
- Comments about a person's body or sex life
- Comments about a person's perceived sexual orientation
- Sexually degrading comments
- Racial name-calling
- Abusive language directed at a person because of his or her belonging to a protected class
- Sexually crude hand gestures, leering at the body, sexually suggestive winking, standing too close, tongue gestures
- Posting, texting, IMing, Tweeting based on a person's protected class
- Displaying of posters, cartoons, etc. regarding sexually suggestive themes, race, religion, etc. This also can be things posted on the internet, social networking sites like MySpace, Facebook, etc, and YouTube
- Pornography
- Sexually suggestive "gifts"
- "Stalking" behavior
- Touching, hugging, kissing, or patting
- Intentional and repeated brushing or bumping against a person's body
- Physical violence such as kicking, punching, pinching, headlocks, wedgies, tripping, etc.
- Malicious teasing, name-calling
- Threatening
- Restraining or blocking a person's movement

The time a bully spends thinking up bad things to do to a person, or the time a victim spends trying to avoid or to get over being bullied is simply productive time lost. Child Biff Tannens grow up to be adult

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Biff Tannens unless the bullying behavior is unlearned. Congratulations to those of us who were bullied as children and still managed to grow into productive members of society!

If you or someone you know is experiencing harassing behavior by an employer, teacher, co-worker, vendor, or fellow student, please contact your human resources department or school administration. If you believe the behavior you are experiencing is a violation of the Minnesota Human Rights Act, please contact us immediately.

Did you know?

The Human Rights Act protects younger workers (who are at least 18), as well as older workers, from age discrimination. An employer cannot refuse to hire an 18 year old because he or she is deemed "too young." (However, an employer can require a certain level of job-related experience, and some laws and regulations may set a minimum age for certain professions.)

...

If you have experienced discrimination, you must file a charge with the Department of Human Rights within one year of the date the discrimination took place, or your charge cannot be accepted. That "statute of limitations" has a few exceptions, but it's a good idea to file as soon as you can.

Settlements



ASPEN EQUIPMENT TO PAY \$20,000 IN SETTLEMENT OF RACE DISCRIMINATION CHARGE

Charging Party

Otis Farmer
Minneapolis, MN

Respondent

Aspen Equipment
9150 Pillsbury Ave. S
Bloomington, MN 55423

What the charging party alleged:

Throughout more than eight years of employment at Aspen Equipment, Farmer, a black male and the company's only black employee, was treated less favorably than his coworkers. In April 2007 he was told his job as a "parts runner" had been eliminated, that he would be terminated, and that no other jobs were available. However, when he visited his former work site less than one month later, he found several white males doing his former job, and learned that two additional employers were to be hired to do the same job. In a charge filed with the Department of Human Rights, Farmer alleged that he was terminated and treated differently because of his race.

What the Department's investigation found:

In answering the charge, the company argued that it had terminated Farmer because his position was no

longer needed, and that no one had been hired to fill it. A new employee had been hired to fill a different position with different duties, the employer stated.

The Department's investigation found that Farmer's job functions had not been eliminated after he was terminated, and that although terminated for "lack of work," his job duties had been assigned primarily to Caucasian employees hired shortly before and after his termination. In addition, witness information confirmed that Farmer's supervisor had constantly belittled him and treated him differently than non-black employees. The Department found probable cause to believe that the charging party's race had been a factor in his termination and adverse treatment.

Terms of settlement:

In a negotiated settlement, Aspen Equipment agreed to pay Otis Farmer \$20,000; to examine and revise its policies and procedures regarding racial discrimination; and to provide antidiscrimination training for its managers and human resources personnel.

This settlement agreement does not constitute an admission of any liability, an admission of a violation of the Minnesota Human Rights Act or any other law, or an admission of wrongdoing by the respondent.

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**TACO JOHN'S SETTLES
CHARGE OF RACE AND
SEXUAL ORIENTATION
DISCRIMINATION**

Charging Party

Angela Reese
St. Paul, MN

Respondent

Taco John's Inc.
2589 Hamline Ave. N Unit A
Roseville, MN 55113

What the charging party alleged:

Throughout her employment at Taco John's restaurant, Angela Reese, a black, lesbian female, was subjected to negative comments and other discriminatory treatment because of her race and sexual orientation. A shift manager referred to her as a "fruit" and informed all new employees about her sexual orientation. A general manager made jokes and negative comments about her race, and about the restaurant's African-American customers. She was falsely accused of stealing food, given warnings that were undeserved, and otherwise treated adversely compared to white and heterosexual employees. She was eventually terminated; her race and sexual orientation were factors in her termination.

What the Department's investigation found:

In answering the charge, the respondent denied that it had engaged in unlawful discrimination, and stated that it had investigated the charging party's complaints about unlawful conduct, and found them to be without merit. The charging party was disciplined and

terminated because it had violated employment policies, the respondent maintained.

The Department's investigation found insufficient evidence to support Reese's claim that a supervisor had made race-based comments directed at her in front of coworkers, or to corroborate her other specific claims regarding racial or sexual-orientation based comments in the workplace. The Department did find, however, that Reese had complained about racial and sexual orientation harassment, and that respondent did not initiate any inquiry into those complaints until after she had been terminated almost two months later. The Department also found evidence that the charging party had been treated differently with respect to disciplinary actions, because of her race and sexual orientation, in comparison to her white, heterosexual coworker. Thus, there was probable cause to believe that the charging party's race and sexual orientation were factors in disciplinary action taken against her and in her termination, in violation of the Human Rights Act.

Terms of settlement:

In a negotiated settlement, Twin City T.J.s, Inc., agreed to pay \$3,500 to Reese, and to make a \$500 donation to a Gay Lesbian Bisexual Transgender (GLBT) organization of its choice. It also agreed to develop new policies to address discrimination, harassment and hostile work environments, and to provide two hours of training on fair employment practices for all employees at its Maryland Avenue location.

This settlement agreement does not constitute an admission of any liability, an admission of a violation of the

Minnesota Human Rights Act or any other law, or an admission of wrongdoing by the respondent.

**"THE NASTY HABIT" BAR IN
ALBERT LEA SETTLES
CHARGE OF RACE
DISCRIMINATION**

Charging Parties

Sara Agbokou
Senyo Agbokou
Austin, MN

Respondent

The Nasty Habit
134 W. Williams St.
Albert Lea, MN 56007

What the charging party alleged:

Senyo Agbokou is a black African; his wife, Sara Agbokou, is white. On Friday, May 11, 2007, the couple sought admission to The Nasty Habit tavern in Austin. Sara Agbokou, was allowed into the bar, but her husband was not. The tavern's stated reason for denying admission to Senyo Agbokou: they were not admitting "Mexicans and African Americans" who were not Albert Lea residents.

What the Department's investigation found:

In answering the charge, the respondent denied that Senyo Agbokou had been refused admission to the bar because he is black and of African origin. It claimed that it has a policy whereby it only grants admission to local residents, and people from out of town who are known to the bar's employees, management or owners.

The Department's investigation

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found witnesses who stated that Caucasians who are not local residents were admitted to the bar without difficulty, despite not being known to employees. The tavern's owner disclosed that the business had a practice of applying its "local residents" policy, so as to exclude African-American and Hispanic customers who were from out of town because the respondent believes that they are more likely to cause problems that might result in the bar losing its license. The Department found probable cause to believe that The Nasty Habit had engaged in unfair discrimination in the area of public accommodations, in violation of the Human Rights Act.

Terms of settlement:

In a negotiated settlement, the respondent agreed to pay Senyo and Sara Agbokou \$6,000, to draft a policy regarding nondiscrimination in public accommodations, and to provide all of its owners, managers, and staff at least two hours of training in the race discrimination in public accommodations provisions of the Minnesota Human Rights Act.

This settlement agreement does not constitute an admission of any liability, an admission of a violation of the Minnesota Human Rights Act or any other law, or an admission of wrongdoing by the respondent.

CITY OF MINNEAPOLIS
SETTLES CHARGE OF
DISABILITY
DISCRIMINATION AGAINST
POLICE DEPARTMENT

Charging Party

Lisa Burch
Minneapolis, MN

Respondent

Minneapolis Police Department
350 South Fifth Street - Room 130
Minneapolis, MN 55415

What the charging party alleged:

Lisa Burch, who is deaf, contacted the Minneapolis Police Department, fearing that her missing nine-year-old son had been abducted. Arriving at her home to investigate and to interview Burch, police knew she was deaf, but failed to provide an interpreter or any other auxiliary communication aids or service. Although she requested an interpreter several times, her requests were refused. She also learned that she could not contact the Minneapolis Police Department directly through its 911 emergency number when she used the relay system.

What the Department's investigation found:

In answering the charge, the respondent maintained that it had made a good faith effort to accommodate Burch: it had attempted to communicate with her in writing, but she refused to cooperate; it had sought the cooperation of member of the charging party's family, who refused to interpret; it conducted a wide search for an interpreter, which was difficult in the early hours of the morning when police had arrived; and it had ultimately provid-

ed a police officer who could sign. The Police Department also noted that it had provided the same search and investigative services to the charging party that it would have provided to a hearing individual.

The Department of Human Rights' investigation determined that the Minneapolis Police Department had failed to meet its obligation under the ADA. "Although various individuals employed by the respondent attempted to communicate with the charging party, the lack of an effective standard procedure resulted in its failure to fulfill its responsibility," the Department found. Writing notes to a person who is deaf or hard of hearing is a "stop-gap" measure that does not relieve the responsibility to provide an interpreter — not all deaf and hard of hearing persons have equal proficiency in English, and in this case the charging party's ability to communicate in English was limited. The family members who had been asked to interpret included the charging party's sister and a minor child; requiring a friend or family member to interpret is not appropriate and may violate an individual's confidentiality. The fact that the police department may have made a wide search for an interpreter does not excuse its failure to provide an accommodation — given the high volume of emergency calls, it is likely that interpreters will be needed on short notice at a regular basis. Thus, the police department's wide search "is not a defense, but evidence of the respondent's failure to plan," the Department of Human Rights found. Although the respondent did ultimately provide a police

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officer who could sign, the officer was not proficient in ASL (American Sign Language), which is the charging party's primary language.

There is no dispute that the police department provided the same search and investigative services that it would have provided to a hearing parent of a missing child. But the respondent's failure to ensure that it communicated effectively with Burch means that she was not given full and equal access to the respondent's services, the Department of Human Rights concluded. It found probable cause to believe the Minneapolis Police Department had discriminated against the charging party in the area of public services.

Terms of settlement:

In a negotiated settlement, the Minneapolis Police Department (MPD) agreed to a series of measures designed to ensure effective communication with individuals who are deaf or hard of hearing. Among the steps to be taken, MPD will designate a Deaf Communication Training and Development Coordinator whose duties will include coordinating training for all MPD employees on MPD procedures for communicating with deaf and hard of hearing people. Additional provisions of the agreement address providing auxiliary aids and services; the availability of qualified interpreters, response time when a request for an interpreter is made; facilitating calls from deaf or hard of hearing calls, and a complaint procedure for deaf or hard of hearing persons who are dissatisfied with services provided by the MPD, among other provisions.

MPD also agreed to pay the charging party \$10,000, and to provide her with a letter of apology.

This settlement agreement does not constitute an admission of any liability, an admission of a violation of the Minnesota Human Rights Act or any other law, or an admission of wrongdoing by the respondent.

**AFTON ALPS SETTLES
CHARGE OF DISABILITY DIS-
CRIMINATION**

Charging Party

Evelyn Nultemeier
Eagan, MN

Respondent

Afton Alps
6600 Peller Ave. S
Hastings, MN 55033

What the charging party alleged:

For more than five years, Afton Alps had accommodated Evelyn Nultemeier's disability: She is unable to bend her left knee far enough to be able to stand up quickly to unload from the ski lift. So she would ride the ski lift holding her skis, and when she would get to the top, the operator would stop the lift. She would then walk down the ramp away from the lift, and put on her skis.

But one day in 2006, Afton Alps' Director of Skiing advised Nultemeier's husband that it would no longer provide this accommodation. The lift operator would no longer stop for her, even though it stops the lift for skiers who fall and disabled people who are "sled" skiers. She contacted Afton Alps a second time to request the accommodation that had been provided previously, but the Director of

Skiing again refused. Nultemeier filed a charge with the Department of Human Rights, alleging discrimination in public accommodations because of her disability.

What the Department's investigation found:

In answering the charge, the respondent agreed that it had denied Nultemeier's request, but argued that it had provided her with two reasonable alternatives: She could use either the facility's conveyor lift/tow-ropes, or its sit-ski device. For Nultemeier to hold her skis while on the lift, as she had requested, could pose a safety hazard to other skiers if she should drop a ski, the respondent maintained. The respondent further argued that Nultemeier's condition was not in fact a disability, as it does not materially limit any major life activity. Thus, there was no duty to accommodate.

The Department of Human Rights found that information provided by the charging party was sufficient to establish that she was disabled, and that the alternative accommodations offered by Afton Alps were not reasonable. The respondent did not evaluate the charging party's capabilities or give consideration to her needs, but concluded unilaterally that she should either use a conveyor that would give her access only to novice slopes, or use a sit-ski that would not be an appropriate accommodation for her physical limitation. Evidence did not show that the requested accommodation would be unduly burdensome to the respondent; there would be no significant cost associated with it, it would not

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be disruptive to other customers, and would not pose a direct threat or significant rise to the health and safety of others, the Department found. The respondent had denied the charging party full and equal enjoyment of its facilities by refusing to modify its practices to afford her the opportunity to ski on the slopes commensurate with her physical abilities and skill level, the Department concluded. It found there was probable cause to believe Afton Alps had discriminated against Nultemeier in violation of the Human Rights Act.

Terms of settlement:

In a negotiated settlement, Afton Alps agreed to allow Evelyn Nultemeier to ski at the facility and that its staff would stop the chairlift to allow her to exit, as she had requested. The respondent also agreed to reexamine its policies and procedures with respect to reasonable accommodation of persons with disabilities, and to conduct training sessions for supervisors and managers on the disability provisions of the Minnesota Human Rights Act. In addition, Afton Alps agreed to provide Evelyn Nultemeier and her husband with ski passes for the 2008-2009 and 2009-2010 seasons for Monday thru Thursday, non-holiday use.

This settlement agreement does not constitute an admission of any liability, an admission of a violation of the Minnesota Human Rights Act or any other law, or an admission of wrongdoing by the respondent.

WAL-MART TO PAY \$12,000 IN SETTLEMENT OF DISCRIMINATION CHARGE BY TRANSGENDER EMPLOYEE

Charging Party

Chrissy Nakonsky
Brainerd, MN

Respondent

Wal-Mart Stores inc
702 SW 8th St
Bentonville, AR 72716-8312

What the charging party alleged:

When she was hired by Wal-Mart in 2005, Chrissy Nakonsky explained to her employer that she was a transgender person transitioning from male to female, and that she self-identified as a woman. Although her legal name was Jeffrey, she was permitted to dress according to the women's dress code, and to wear the name "Chrissy" on her name badge. Then one day in January 2006, a Wal-Mart assistant manager informed her that she would no longer be permitted to dress as a woman or to wear earrings or her hair in a ponytail. Some customers had complained and threatened to stop shopping at Wal-Mart unless she dressed as a man, the manager explained. Wal-Mart's legal department subsequently advised her that she could not dress as a woman unless she had a doctor's excuse, and that she would be terminated if she violated the men's dress code without such an excuse.

On February 23, Nakonsky provided her employer with a note from her doctor, explaining that she is required as part of her transition to live full-time in the female role, including presenting herself fully as female. Two days later, her employer told her that despite the note, she would be required to dress accord-

ing to the men's dress code until her driver's license and social security card said "female." She asked why the rules kept changing. She was later told that she would be permitted to wear blouses and pants, but no dresses, no earrings and nothing too "feminine." If she wished to wear a wig, it would have to be approved by management. She was also required to wear the name "Jeff" on her name tag instead of "Chrissy." On March 20, she legally changed her name to Chrissy, and was allowed to use that name on her badge. In mid-April, she was finally allowed to dress according to the women's dress code. Nakonsky filed a charge with the Department of Human Rights, alleging that Wal-Mart had discriminated against her on the basis of sexual orientation. "My attire did not conform to the respondent's or its customers' stereotyped notions of men and women... though I provided information about the Minnesota Human Rights Act and its requirements, the respondent insisted that they were not compelled to allow me to dress in a way that is consistent with my identified gender," she stated in her charge.

What the Department's investigation found:

In answering the charge, Wal-Mart argued that it had acted appropriately and within the law. It had told Nakonsky that she could dress as a woman as long as her attire and presentation was professional, but her woman's attire was not professional, Wal-Mart determined. The company requires all associates to use their proper name on their names badges, and when Nakonsky legally changed her name, Wal-Mart

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changed her name badge. Further, when Nakonsky brought in a doctor's note diagnosing gender dysphoria and was to live full-time as a female, Wal-Mart allowed her to dress and conduct herself as a

woman, it maintained.

Under the Minnesota Human Rights Act, sexual orientation includes having an identity or self-image not traditionally associated with one's biological gender. In its investigation, the Department of Human Rights determined that the

weight of the evidence indicated that Wal-Mart had failed to treat Nakonsky in a manner that was consistent with her gender identity. It had "belatedly" allowed her to dress according to its women's dress code, but very conservatively. Although it had required Nakonsky to use her proper or legal name rather than the name she was known by, "Chrissy," it had allowed other, non-transgendered employees to wear nicknames on their badges. In addition, management knew that co-workers were shunning and harassing Nakonsky because of her gender identity and expression and creating a hostile work environment, but failed to prevent this harassment. Although Nakonsky had eventually left her job at Wal-Mart, she had done so because she had been subjected to intolerable working conditions involving illegal discrimination based on her gender identity. The Department found probable cause to believe that Wal-Mart had discriminated against Nakonsky in violation of the Human Rights Act, and that her termination was a "constructive discharge."

Terms of settlement:

In a negotiated settlement, Wal-Mart agreed to pay Chrissy Nakonsky \$12,000, and to provide training at the store where Nakonsky had worked for salaried members of management on employer obligations under the Human Rights Act regarding discrimination on the basis of sexual orientation.

This settlement agreement does not constitute an admission of any liability, an admission of a violation of the Minnesota Human Rights Act or any other law, or an admission of wrongdoing by the respondent.

Department Snapshot



MDHR results for January 1, 2008 - December 31, 2008

Number of contacts to the department (inquiries/referrals):

11,469

New Charges Filed:

871

Total Number of Cases Closed:

911

Avg. Number of days to issue a PROBABLE CAUSE determination on cases of discrimination:

343

Avg. Number of days to issue a NO PROBABLE CAUSE determination:

364

Percent of cases by protected class (top 5):

Disability 21%

Race 17%

Sex 17%

Age 11%

National Origin 6%

Percent of cases by area (top 5):

Employment 63%

Reprisal 18%

Housing 5%

Public Accommodations 5%

Public Services 3%

Case of the Month

Department of Human Rights finds probable cause that Mall of America engaged in racial profiling



“Enough, please go harass someone else,” Allen finally said. The security officer then called for backup, telling Allen he had been uncooperative...

What the charging party alleged:

One day in June 2007, Bobbie C. Allen, Jr., an African American male, went to the Mall of America to have lunch with a female friend who worked at a Mall clothing store. While he waited for his friend to get off work, he bought a café mocha, sat down outside the store, and began to write in his journal. Not long after he sat down, a Mall security officer approached him and asked if he was interested in taking a survey regarding customer safety. He said he was not. The security officer persisted, Allen declined again, but the security officer continued to question him anyway. Allen told her he was uncomfortable with the questions, and he was only at the Mall to have lunch with a friend. His friend, who is white, came out of the store briefly, said she would be ready in 20 minutes, and asked if Allen could wait. Sure, he said. The security officer then explained about the “survey” and asked Allen’s friend where they were going to lunch. His friend went back into the store without answering. The security officer continued the questioning, asking Allen where he shopped, how he knew his friend, and other personal questions Allen believed the Mall had no right to ask.

“Enough, please go harass someone else,” Allen finally said. The security officer then called for backup, telling Allen he had been uncoopera-

Charging Party

Bobbie C. Allen Jr.
Minneapolis, MN

Respondent

Mall of America
60 E. Broadway
Bloomington, MN 55425

Case number 50196,
closed 2-6-09

tive. The security officer’s supervisor arrived and wanted to continue the questions. “Enough with this,” Allen told her. He felt disturbed, shaken, and exhausted. He feared that if he tried to leave at that point, he would be accused of resisting.

He was then approached by a City of Bloomington police officer. He explained to the officer that he was just waiting to have lunch with his friend, who had told him to wait 20 minutes. The police officer asked him for identification, and Allen produced a State ID card. The officer then conferred with the Mall’s security personnel, and when he came back, Allen said that he wanted a report about the incident. The police officer told him he should just let the Mall security do its job, and walked away. The security officer who had first confronted him then told him that

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the reason he had been questioned about his activities was because he was writing. He would not be arrested, the security officer said.

Allen's female friend arrived, and the two of them went to lunch.

In a charge filed against the Mall of America with the Minnesota Department of Human Rights, Allen stated that he believed he had been racially profiled by a Mall security officer when the officer questioned him about his activities. "I was detained for almost 30 minutes. I did not see white patrons being treated in the same manner." Allen alleged discrimination in public accommodations based on race, in violation of the Human Rights Act.

What the Department's investigation found:

In answering the charge, the Mall of America denied that it had racially profiled Allen or otherwise engaged in discrimination. It stated that its security officer had observed Allen, and considered his behavior of "observing people, watching stores, writing in a notebook and intermittently talking with a female" as suspicious. Because of this behavior, security officers determined that further involvement with Allen was necessary. When its officers engaged him in a security interview, Allen became uncooperative and police were called for further investigation. The matter was ultimately resolved when Allen agreed to produce his identification to police and he was cleared, the respondent explained.

In its investigation, the Department of Human Rights interviewed witnesses, including Mall security officers, and reviewed Bloomington Police Department

incident reports as well as Mall security reports and field notes.

According to information supplied by the respondent, Mall of America security officers engage patrons in "security interviews" between 70 and 84 times per week, on average. The officer who questioned Allen was a member of the Mall's Risk Assessment and Mitigation (RAM) unit, which "specializes in behavior profiling." The RAM unit "is based on a technique that has been perfected over the years in Israel." Leaders of the unit received training

Mall of America security officers engage patrons in "security interviews" between 70 and 84 times per week, on average.... Leaders of the unit received training in Israel, and are trained to look for "intent rather than means."

in Israel, and are trained to look for "intent rather than means." The unit has eight full-time employees and is staffed each day of the year, according to documentation supplied by the Mall.

The RAM unit generates reports and field notes on suspicious persons, whether or not the individual cooperated during the security interview or if police intervention did, or did not occur, the Department's investigation found. Some of the reports indicate the race of the suspicious individual;

some do not. The field notes include check boxes to denote the suspect's race as Caucasian, African-American, Asian, Hispanic, Native American and Other.

The Department subpoenaed information on reports and field notes for a two-week period that included the incident involving Allen. In response to the subpoena, the respondent provided its report for the incident involving the charging party, but no other reports. The respondent's statement about the number of contact with "suspicious" persons that occur each week suggests "it is not likely that the security report for the charging party was the only such security report made during that two week period," the Department concluded. The respondent also provided seven field notes; the Department found it is likely that more field notes exist. "The respondent's failure to provide relevant information does not support its contention that its security practices are race and ethnicity neutral," the Department found.

The Department concluded that "rather than support the respondent's position, the records support the charging party's contention that he was subjected to heightened scrutiny because of his race." The Department noted that records supplied by the respondent show that it found suspicious a white man typing on a laptop computer, who was uncooperative with the security officers' attempts to ascertain why he was at the mall. But the officers choose not to escalate the situation by calling the police, but instead allowed the man to leave the mall when he identified his family. In contrast, a Hispanic man who coop-

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erated with security officers by showing his identification and explaining his presence at the mall was subject to additional scrutiny, and mall security called the police. "The respondent's security officer requested that the city police officer go so far as to run an Immigration Alien Query — even after the police officer had established the Hispanic man's identity. Records show that some white individuals were allowed to sit for hours, engaging in similar behaviors as the charging party (sitting and writing or typing), before officers approached them for a security interview, the Department found.

One of the respondent's security officers indicated that Allen was deemed uncooperative, in part because he had objected to the officer's conduct as being racially motivated. "This further supports the conclusion that the respondent's stated reasons for selecting the charging party for additional scrutiny are a pretext for discrimination," the Department found. The Department determined that there is probable cause to believe that Allen was subjected to illegal discrimination because of his race, in violation of the Human Rights Act.

(Note: The case was closed by the Department of Human Rights on 2-6-09; in lieu of settlement, the charging party elected to sue privately.)

"Where Do We Go From Here?"

Human Rights Day 2009 Preview

On Friday, December 4, 2009, the Minnesota Department of Human Rights and the League of Minnesota Human Rights Commissions will hold the 26th Annual Human Rights Day conference at Saint Paul RiverCentre. The conference will feature a keynote address by author and Wayne State University Law School Dean Dr. Frank Wu. Wu is the author of *Yellow: Race in America Beyond Black and White*, and co-author of *Race, Rights and Reparation: Law and The Japanese American Internment*.

The conference theme, "Where Do We Go From Here?" was inspired by a speech Dr. Martin Luther King delivered in Atlanta, GA in 1967. King said, "Many of the ugly pages of American history have been obscured and forgotten... America owes a debt of justice which it has only begun to pay. If it loses the will to finish or slackens in its determination, history will recall its crimes and the country that would be great will lack the most indispensable element of greatness — justice."

The Minnesota Department of Human Rights is currently seeking proposals for workshops.

Proposals are requested for one-hour breakout sessions on any area of human rights. Particular attention will be given to proposals which may qualify for CLE, ADR, POST, and other continuing education credits, and to sessions relating to forms of discrimination prohibited by the Minnesota Human Rights Act. The deadline for submitting proposals is May 1, 2009. Download a call for proposal or submit a proposal online through the Department's web site at

http://www.humanrights.state.mn.us/contact_hro9proposals.html.

For the third consecutive year, the Department will also be holding a poster contest for students in Grades K-12, in collaboration with partners and sponsors. Contest rules and entry forms will be posted here on the Department's web site in April.

Human Rights Day 2009 • At a Glance

When:

Friday, December 4, 2009

Where:

Saint Paul RiverCentre

Conference Theme:

Where Do We Go From Here
-- Dr. Martin Luther King Jr., 1967

Keynote Speaker:

Dr. Frank Wu, author of *Yellow: Race in America Beyond Black and White*, and co-author of *Race, Rights and Reparation: Law and the Japanese American Internment*.



Dr. Frank Wu

Providing a Second Chance

A debate over the need to help ex-offenders rejoin society and the requirements of public safety heats up. We present six different points of view on some key issues.

In Minnesota, one out of every 26 adults is in prison, on parole, on probation, or under some form of supervision by the correctional system. That places Minnesota near the top, out of 50 states and the District of Columbia, with the fourth highest percentage of adults under correctional control.

For some who are alarmed at these numbers, the good news is: Minnesota puts fewer people in prison, as a percent of its population, than any other state expect Maine. We use parole and probation more than almost any other state.

But the long-term consequences for those who are sentenced to probation are often the same as for those who do hard time behind bars: the stigma of being convicted — or even arrested — can make it almost impossible to find a job, especially in a tough economy. Finding a place to live may be equally challenging as landlords screen out applicants with criminal histories. Then there's the loss of basic civil rights, including the right to vote. Ironically, those who commit less serious offenses and are given probation may lose their rights for more years than those who go to jail, as a probation period can be far longer than a prison sentence. In fact, only one



out of four disenfranchised Minnesotans is incarcerated.

If one is a person of color, the odds of going to jail or otherwise being under correctional supervision — with the civil rights, employment and other consequences the law requires or the stigma entails — are far greater. About ten percent of Minnesota's African-Americans have lost the right to vote through our state's felon voting ban. Nationally, blacks are four times as likely as whites to be under correctional supervision.

How did we get here? In 1982 less than one percent of Minnesotans were under correctional supervision; 25 years later there had been a 284 percent increase,

according to a study just released in March 2009 by the Pew Center on the States. The percentages skyrocketed as legislators across the nation responded to calls to get tough on crime by putting more people behind bars, or subject to longer terms of correctional supervision.

No one wants to be perceived as "soft on crime." But a growing number of legislators, community organizations, researchers and others are asking if convicting and sentencing so many of our fellow citizens is necessarily the best way to reduce crime or make us safer.

In February a group of advocacy

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organizations, ex-offenders, and lawmakers came together for a “Second Chance Day on the Hill,” citing what they see as the devastating effect of the many collateral consequences of criminal convictions upon Minnesota communities.

“There are currently over 200 collateral sanctions under Minnesota law — the unofficial barrier created by the stigma of a record — and hundreds of thousands of Minnesotans who must overcome these barriers,” said Judge Pamela Alexander, President of the Council on Crime and Justice, in a news release.

“While it is important for people to face the consequences of criminal activity, once they have served their sentence they must be given attainable paths to

employment and housing, so that they can fully contribute to the health of our communities.”

The issues raised by critics of current criminal justice policies do not lend

themselves to easy answers, upon which

a consensus is likely any time soon.

What should an employer have a right to know about a job applicant’s history of arrests or conviction?

What should an employer be able to consider, and at what stage in the hiring process? What does a landlord have a right to know? Should a criminal record be able to be expunged, and under what circumstances? When should civil rights, including the right to vote, be restored? How can we balance the rights of society, employers and others with the need to provide those who have paid for the crimes with

an opportunity to move beyond their past?

And — of interest to those on all sides of the debate — what approach is most likely to reduce crime and make us safer in the long run? What’s fair? And what works?

This session a series of bills have been proposed in the Senate and House that at least begin to deal with these issues. They are, in the view of at least some of their proponents, an important but still modest beginning on the road to ensuring a “Second chance” for thousands of Minnesotans, while enhancing public safety.

None of the bills currently under consideration go as far as laws that already exist in some of our neighboring states. In Wisconsin, for example, under the state’s Fair

Employment Law, an employer may ask whether an applicant has any pending charges or convictions, but these can only be given consideration if the offenses are substantially related to the

particular job in question. The employer is prohibited from inquiring into an arrest that did not lead to a conviction.

In Illinois, that state’s Human Rights Act prohibits an employer from refusing to hire someone because they have an arrest record. An employer may lawfully consider convictions, unless a conviction had been expunged.

The Minnesota Human Rights Act (MHRA) does not have such a provision — an arrest or conviction record is not specifically protected under the MHRA, as it is in

Wisconsin, and under current law an employer may ask about a job applicant’s past involvement with the criminal justice system. But courts have held that employers cannot regard a previous arrest or conviction as an absolute bar to any job. The kind of blanket prohibition could have an adverse impact on other protected classes, such as race, and violate the Act.

The federal Equal Employment Opportunity Commission (EEOC) has similarly held under Title VII of the Civil Rights Act of 1964, “that since the use of arrest records as an absolute bar to employment has a disparate impact on some protected groups, such records alone cannot be used to routinely exclude persons from employment.”

The Minnesota Department of Human Rights is a neutral agency. In addition to investigating charges of discrimination and other responsibilities under the Human Rights Act, the Department seeks to “educate to eliminate” discrimination by helping to encourage a dialog on issues that are important from the point of view of civil and human rights.

In this issue of *The Rights Stuff*, we present some comments from six Minnesotans with unique perspectives on the issues raised by legislation proposed to ensure a “Second Chance” for those who have been become involved with the criminal justice system. They represent different and sometimes opposing interests, but tend to share at least some common ground: the belief that we must protect society, but must also provide an opportunity for some who have made mistakes to eventually rejoin society as productive citizens.

GOV. ARNE CARLSON

Comments from Minnesota's Governor, 1991-1999

Question: What do you see as the obstacles facing someone with an arrest or conviction record who is seeking to become a productive member of society? What do you think should be done about them?

The justice system is premised on, one, if you commit an infraction of the law and you're punished, once that punishment ceases you go back into society as a normal member of society. That is the expectation. That's not to suggest that states haven't compromised that, but that was the original expectation.

Question: Do you believe that expectation is largely being met, or are there some obstacles we need to address?

There are some very difficult calls. One is on the sexual predator — we know that the likelihood of recidivating is enormously high and so it's not out of line for society to exercise or impose certain restrictions, be it some monitoring devices or even registration. We now accept the notion that if you are a sexual predator, you will be identified within the community and there will be expectations that you can't go within certain distances of schools, playgrounds, etc. That's not unreasonable to protect the safety of society.

Question: What about someone who has committed a less serious crime, perhaps years ago. Should employers have a right to know about that sort of thing? Should landlords?



Gov. Arne Carlson

I would be very reluctant to withhold information from employers. But the dilemma then becomes, do they have the right to impose some sort of discrimination that is unfair? And so those two have to be balanced out, and it may be ultimately you have to lay out some guidelines as to what an employer can do with the information. If a person has been convicted of embezzlement, you don't want them to be the CFO of a company. Those kinds of limitations are not unreasonable. But does that mean that he can't work in the underwriting department? No. It does not mean that. And so maybe it would be well for the Department of Human Rights to draft some overall guidelines in cooperation with the Chamber of Commerce, etc. that would allow an individual to function to the highest level of his talent, with the proviso that he not go back into the field where he misapplied his talents.

Question: Wisconsin has a law that requires an employer to consider the circumstances of a person's previous conviction, and whether it's relevant to the job.

That sounds reasonable.

Question: Would you suggest that kind of legislation for Minnesota?

I don't think that's unreasonable at all. I think that's fair.

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Contributors

GOV. ARNE CARLSON
Minnesota's Governor, 1991-1999

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Question: There are proposals in Minnesota that could make it easier for an individual to seek expungement of a criminal record, and provide a procedure for judges to consider certain criteria. Do you have any thoughts on that issue?

I would be very careful on expungement. Because you are then granting government the power to erase relevant pieces of a person's background. You've got to be very careful about that. I would tend to take a dim view of it.

Question: How should we address the larger issue: getting people who have had involvement with the law back into society, while protecting society from those who might want to again do harm?

So much of the United States is dependent upon law, as opposed to just good common sense. And laws have terrible limitations, they really and truly do. I think we should start to rely more and more on good common sense. There is nothing wrong with symposiums and workshops and bringing the employer into the solution. I would strongly recommend that at least a few hours a year be set aside for that kind of a symposium to occur, so that companies and particularly their human resources departments can better understand what kind of responsibility we have.

If you want to increase the rate of recidivism, there is an easy way to do it —and that's to make sure the person coming out of prison is forever unemployed. That will give you

your highest rate of recidivism. And so that shows you the silliness of that kind of a policy.

Question: With respect to human rights, one thing that has been pointed out is that arrest and conviction records can have a disproportionate impact on communities of color.

Absolutely. There is no question about that. We would like to assume that we have a perfect justice system — it's pretty obvious that we don't.

We have a good one, but it's far from being perfect. We also know that it's tilted in favor of those who have the financial resources to provide good, competent counsel.

We define poverty as lack of money. I would argue that that's not the most important concern — the most important concern is the lack of power, lack of access. When you live in a community that is impoverished, that's not where your lawyers live. Your doctors don't live there, your university professors don't live there, you don't have a professional class. And that's really the most difficult challenge: to realize that you in fact are powerless. I was a victim of that as a child. I've never forgotten it. And if it hadn't been for a schoolteacher, I probably would have been thrown in some institution.

Question: What should we be doing to address these disparities?

There was a wonderful piece on television yesterday about a young man who had just formed a company that was spun off from Google. And it was cited in this particular story — this is going to be one of the growth companies. His father was a Mexican immigrant who worked in the fields. That's the kind of story we should start to learn to celebrate.

The bias that we have towards immigrants is appalling. And we really haven't punctured that. My parents came over from a foreign country, they could not speak

English. They had to go through the normal challenges that any immigrant has, and that's true of just about everybody. And yet we seem to be very unwelcoming towards immigrants today, and we have to be very careful about that. Because

the truth is, immigrants for decades now have not only performed all lot of tasks we don't really like to do ourselves, but aside from that, think of all the enormous business opportunities that they ultimately gave us.

Government is there to maximize people's opportunity for success, not to minimize them. And I think that for the last ten or so years, we've had way too much discussion on television and radio — and too much screaming and shouting — at "those immigrants." They weren't the ones who caused the Madoff scandal. They didn't create the mortgage mess.

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We seem to be putting more people in jail than in most other countries, and keeping them under some sort of criminal justice system supervision for a longer period of time. What are your thoughts on that trend?

We are going to have to re-examine that. When you start to take a look at the cost — not just of prisons, but particularly of juvenile facilities — they are extraordinary. In my day, I think it cost more to go to the Hennepin County Juvenile Center and places like that, than it did to go to Harvard. That's an extraordinary expense, and yet it's one that's automatically funded without dispute.

This country is slowly beginning to realize that it's not the wealthiest country in the world. We're really quite broke, and we are going to have to ration our resources. We're going to have to be much more prudent than we have been in the past. And part of that prudence extends to whether you want to continue to build more prisons and fewer schools, or whether you'd rather build more schools and fewer prisons. And that gets us to the issue of those people who use drugs. Is that really the right remedy: to put them in a cell and lock them up? Is that the smart thing to do? Or are there some other ways that are much more cost efficient?

REP. BOBBY JOE CHAMPION

Comments from Minnesota's State Representative (DFL), District 58B

Question: What are some of the obstacles now facing those who have been arrested or convicted of a crime, and want to be productive members of society?

A person who's paid their debt to society faces the unfortunate notion of a criminal background check being executed. Someone may have pled guilty or been found guilty of a crime and been incarcerated, or may only have been arrested. No matter how long ago that set of circumstances happened, they feel the effects of what we call collateral sanctions. They are prohibited from certain employment opportunities, and when we think of education, there are some grants or loans that you can't receive if you have a felony on your record. There are also some challenges around housing.

How do you give people an opportunity to improve their quality of life by getting back into our society, even though they may have had a lapse in their judgment? Or may have found themselves in a set of circumstances that they wish they had not? How do we get them reengaged so that they are not paying this price over and over again? How do we forgive and allow people to get back into society, without this crowd of people saying we're light on crime?

We all end up losing, not just the person who's going through these challenges. If a person can't find a job, they can't pay taxes. If a person can't build up their intellectual capacity, how can they be a part of the intelligent workforce that we need? If you can't get a job and you want to be able to provide for yourself and your family, and there are all of these barriers that prevent you from doing that positively, you're



Rep. Bobby Joe Champion

going to have to do something. So now you find yourself back in an unfortunate situation, and then we as taxpayers end up paying again. We spend over \$30,000 a year for someone to be incarcerated. I'd much rather we make those sort of investments for people to positively contribute to society.

Question: What are the things we need to do to fix this problem you described?

We need to articulate and accept public policies that will lower or delete these barriers. We need to have a paradigm shift — most people think that if you think this way, then you're not tough enough on crime, and I don't think that's the issue. And when we look at the deficits we find ourselves in, we have to think differently about how we spend money and what sort of

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investments we are making.

What are some things that could happen? Expungement of records. There are some things we don't really need to know about. There are certain unfortunate crimes that maybe a person shouldn't be incarcerated for, like low-level drug offenses, for an example — non-violent crime, for an example. I'm not suggesting a murderer should be walking the streets of Minneapolis. So I think that we have to start specifically looking at those sort of things. And that's why I've introduced legislation to give a private employer what I would consider some leeway, if a person wants to sue a private employer for hiring a person that may have had something on their background check.

Question: What should an employer be able to know with respect to the problems in someone's past?

I think an employer should know what a person did. But I think they should know that after they've made a decision that the person is going to get the job or not. Then once they look at the infraction, they can look and see if there is a nexus between the infraction and the potential work that person may do.

What happens now, is that when you fill out an application, they ask the question right upfront. If you answer yes, what do you think they do with your application? They

throw it away. But my felony could have been that I stole a jacket when I was 18 years old, and now I'm 45. I was put on probation, and I've been a rehabilitated person since that time. Now I'm applying to be a janitor in a gymnasium. I think you've got to look at the nexus between the infraction and what the person is looking at doing now.

Question: How can we address the disproportionate impact that background checks and the use of arrest and conviction records may have on persons of color?

We have to have a realistic conversation around all the empirical data that suggests that children of color are disproportionately brought into the system and charged with low-level crimes, or crimes period. If a white kid gets in a fight in school, they aren't referred to the liaison officer and then to court, or anything like that. They're talked to. But a black kid or Latino kid or Asian kid can have the same fight at school, and a child of color is going to the juvenile justice system. So all

“If a white kid gets in a fight in school, they aren't referred to the liaison officer and then to court, or anything like that. They're talked to.”

of a sudden they've got a record, and now this introduction into the juvenile justice system follows them throughout adulthood. That same unfortunate perspective is what people of color and communities of color deal with even as adults. As adults they are incarcerated at disproportionate rates compared to anyone else. And even if they are given probation, they are not given anything that would say: here are

the things you need to do, because we want to make sure that you'll have an opportunity to look at your life differently and make some different choices. So now you get out of jail, and you're trying to find work, or you're trying to go to school or find housing. When your names shows up as part of a criminal background check, they're not going to consider you, or any of the positive things that you could do.

Question: Is there evidence that employers take a different view of an arrest or conviction in someone's past, if the job applicant is also a person of color?

I don't think I have any empirical data that would speak specifically to that question. But people of color are looked at differently, period. Race is an issue. People come with their world views, their experiences, their thoughts, their stereotypes about people. And when they don't know you, they just fill in the blanks based on their worldview and their experiences.

Question: What are the concerns you hear from those who may have reservations about proposed “second chance” legislation, such as reforms to expungement laws?

Right to know. When does a landlord have a right to know? When does an employer have a right to know? There lies their biggest issue. Others will say, are we being soft on crime? Yes, when you do something wrong, there are always collateral sanctions. But the question becomes, how long should these collateral sanctions be in place? And

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how long must a person suffer the results of making a bad decision? And then the bigger question that we've got to ask ourselves is: How much longer are we willing to keep paying the cost, without doing something differently?

Question: What about the argument that all this information is on the Internet anyway, so that expunging it or limiting access to it won't really matter?

But what about the public policy message? If we take a step that says, we believe that this should not be a part of the discussion, then that means something. If an employer knows of an infraction, they should have to make the connection to see if it's relevant to the employment opportunity that the person is going for. It's important to say to employers, hey, here is when you should be thinking about that. We have to frame the issue differently and start talking about it differently.

Question: What is it that drives your passion for these issues?

Fairness. Redemption. Improving our quality of life as Minnesotans. Those are the guiding principles that push me, that drive me. I'm driven by improving the quality of life for all of us, and giving us all an opportunity to build wealth — to be educated, and to provide our children with a quality education. And for all of us to feel safe — not just feel safe, but be safe. These are the things that I believe to be important.

Sometimes we've got to deal with complex and challenging issues in

real-time, for the benefit of the whole. One of the things that President Barack Obama has been talking about is shared sacrifice, and not seeing each other as red or blue states. Are we doing some things in our own practices that are making it

CHRISTOPHER UGGEN

Comments from the McKnight Professor and Chair of Sociology, University of Minnesota

Question: As a sociologist, you have focussed quite a bit on voting rights for those who have been disenfranchised through the criminal justice system. What is your perspective on that issue?

The issue of voting to me is so fundamental, especially as this visible symbol of inclusion in a broader society. I find it frustrating when people treat it as, well, just this minor thing that people forfeit when they commit a crime. Unlike some of the integration programs that I might advocate for, there is very little downside to extending the franchise. If you do implement a much more extensive use of parole, for example, there is always the chance that something terrible is going to happen, and you have to keep public safety first and foremost in those discussions. But with voting, it's a much more clear-cut kind of issue.

Question: SF 564 would restore voting rights at the point of release rather than at the end of sentence. I understand that you support that legislation. Do you believe it goes

difficult for our brethren, fellow Americans, to live and to be contributing members to society? If we are, then we need to look at that. And we need to be honest about what we're doing, and what we need to do to change that dynamic.

far enough in extending or restoring the franchise?

The other day I got a question, why not sever the tie between voting rights and punishment, as is the case in many countries. It gets to the will of the people on this. It's clearly the case that the majority of Americans support restoring the right to vote to people while they're in the community but it's when you get to the prison gates that this sort of deprivation of liberty is not only tolerated but supported. So I think it's a clean system if you say: when you're in, you're in. And when you're out, you're out. So you do expect to have further limitations on those rights when you're in prison.

One interesting twist is that in many nations, you are disenfranchised only if you violate election laws or voting laws. This would narrow the scope considerably if Minnesota went in a direction like that. I think what you're seeing around the country is that more states are making some fine grain distinctions about

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Christopher Uggen

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who should be able to vote and who shouldn't — disenfranchising, say, violent recidivists or some other group, which is largely related to the stigma associated with that group, rather than any sort of natural connection with the voting.

Question: What is the trend nationally with respect to voting rights and expanding the franchise?

If you look at when the most restrictive laws were passed, it was around the 1860s, 1870s, 1880s, and it was part of the Civil War, Reconstruction era in which many other disenfranchising measures were implemented. These laws started to be liberalized during the civil rights era in the 50s, 60s and 70s. But if you look at the geography of disenfranchisement, it's largely still former slave states that have the strictest prohibitions, that might disenfranchise for life.

In Minnesota, we make extensive use of community supervision. Unlike many states that are really over incarcerating, we have a pretty lean and efficient criminal justice system. But the upshot is that people can get long probation sentences, and from the defendant's perspective they are much happier to do probation than have to do prison time. But the upshot is that then you have people who are convicted of less serious crimes, who are

disenfranchised for far longer than people convicted of more serious crimes.

Question: Is there any evidence to suggest that it makes a difference to people if their right to vote is restored, in terms of whether they are likely to end up in trouble with the law again?

That's a question I've been looking at. And I have to offer this with some caveats. It's certainly the case, unequivocally, that those who vote are far less likely to get into trouble. The more subtle point with that though, is that it's very hard to make strong causal claims. I don't want to say that the act of pulling the lever suddenly transforms one into a law abiding citizen. On the other hand, I view it as kind of analogous to the

marriage ceremony, where I don't expect that the act of going to the church and getting hitched necessarily turns one's life around. But it's certainly the case that those former inmates who are married do far better. Voting, to me, is really reflective of

this participating as a stakeholder in society. Simply put, it's like a classic insider, outsider thing — you're less likely to violate if you're part of that community.

Question: How important is the restoration of voting rights to those who have lost those rights? When voting rights are restored, is there a lot of participation in the voting process?

In my models, it's been about half the general population participation rate. But part of the difficulty in measuring that, is that there is so much misinformation. I interviewed a number of Minnesota prisoners, parolees and probationers, and what struck me was how confident and sure they were that they couldn't vote, or that there was a waiting period. There is a set of information floating around out there that says they are ineligible. So it's hard to know, if they knew they were eligible, whether they would be participating at higher rates.

Question: Legislation currently proposed would require them to be given notice that their voting rights have been restored. Why is this legislation important?

One of the things that I looked to, as a criminologist, is that you're really ushered into the system with all this pomp and ceremony. You go before the judge and the judge is in a robe and you're led away in handcuffs — it's a very dramatic sort of act. When you leave prison there is not nearly that sort of effort to mark the occasion, to really welcome you back. We might be able to capitalize on that moment more. I can be a bit of a Pollyanna on this, I'll admit, but I really do think that those ceremonies matter. Otherwise we wouldn't do them at the front end.

I'm a social scientist, so I don't like to get too far out on advocacy issues. But I really do feel strongly — after having studied this issue for a decade — that there are so many good reasons to restore the right to

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vote. And I think that reducing some of the racial disparities in ballot access is chief among them. The idea that there are five million disenfranchised Americans who happen to be mostly poor, and disproportionately people of color, means that you're really getting a skewed kind of view on all sorts of political issues. The idea that elected representatives aren't accountable to this group shifts debate on issues, whether it's the minimum wage or foreign policy or welfare reform. I focus mostly on the effect on the individual who is disenfranchised, but if you think about that individual's community, their children, their family, etc. it goes much deeper. From a human rights perspective, you're really disenfranchising communities.

Question: Your research suggests that about 10 percent of African Americans are now disenfranchised in Minnesota.

That's right. And in a way, it's kind of a classic Minnesota dilemma: I'm not saying that people in Minnesota are acting with the racist intent here. But the issue is, we have a system in which we place a lot of people under supervision in the community to keep them out of prison. But what this has done is really disenfranchised communities of color in a much more powerful and dramatic way.

I'm sure the shift from prison to community corrections was not intended to do this in Minnesota. But I will say, too, that in many American states there is very strong historical evidence of racial intent in

passage of these laws. In the post-war period when African American males were given the right to vote in states like Alabama and Mississippi, it is quite clear from the historical record that these laws were intended to disenfranchise newly-freed slaves because their votes could really upset the balance of power. There was even some gerrymandering on that issue: petty theft and vagrancy were disenfranchising crimes because they were associated with slaves. But murder was intentionally left out, because there was a tradition of honor and many landowning whites were convicted of murder. The call of the Alabama Constitutional convention was, we've got to attack the franchise to avert "the menace of Negro domination."

Question: How do you respond to the argument that, if someone violates the laws of society, they owe a debt to society, and should forfeit certain rights until that debt is paid?

The one I hear, too, is that you've demonstrated that you don't have the judgment to participate as a citizen — you've made poor choices. As someone who is pro-democracy, I think we have to be real careful in deciding who is permitted to be a participating member of our society. If you think about it, who is it that you'd like to vote? I would certainly like people who share my political positions — I'd prefer to disenfranchise Nazis, bigots, and others. But the point is, we're a democracy and we can't do that.

I do think the idea that one forfeits certain rights and privileges when convicted of a crime is a powerful

argument. I would just say that in the case of probation and parole, we've determined that these individuals are safe to join us in our communities and participate as taxpayers, as citizens. I did a lot of interviews with felons and former felons and some of the themes that come out of that very strongly are ideas like taxation without representation — the idea that you're working, and you don't have any right to vote on the kind of schools that your kids have.

I think, from a criminologist perspective, that it's something that we can do with a little downside risk, relative to a lot of the other proposals. Something like the "ban the box" proposal (which would prevent employers from asking initially about applicant's arrest or conviction record) is something I consider to be a good idea in protecting the rights of those who have had a criminal record. On the other hand, I do think there are legitimate rights of employers to inquire into their employees, and their rights have to also be respected. It really requires some serious balancing of interests, risks, opportunities.

Question: You don't see any downsides to extending the franchise to people on probation, for example?

I don't. Occasionally I'll hear people say, well there will be this voting block of former felons who are going to overturn sex offender laws or something. That's clearly not the case. The individuals who are convicted of crimes tended to have values about punishment that are pretty similar to those outside the pris-

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ons. Believe me, they know we need prisons. And what they generally ask for is more specificity with regard to the conditions of their punishment.

Question: How important is having the right to vote to people who have been disenfranchised through the criminal justice system?

When my book came out (*Locked Out: Felon Disenfranchisement and American Democracy; 2006, Oxford*) I did some public events at which I was astounded at how many people would show up for a voting rights forum. They will take this as a real rite of passage — it seems to be a pretty powerful right that folks are embracing. Why do we wear those I voted stickers? Why do we get such a good feeling when we participate. And I'd say for an African American man who's had a rough life and been incarcerated and is coming out trying to make good, to be able to have voted for Barack Obama — that's a powerful moment in that individual's life, often. And to be locked out of being able to participate in this historical moment is pretty powerful.

I did some expert witness work in the state of Florida where they were disenfranchising for life, and I was looking at the operation of the clemency system. It was a voting rights act case so it really did hinge on some racial issues. So I analyzed about 1,000 case files of people who had applied to get their rights back, and it was just fascinating to see their histories. They each had to write a narrative about why they were requesting the restoration of their civil rights. One of the things

that was interesting was that the whites were more likely to be requesting a restoration of civil rights for the purpose of gun ownership. And African-Americans were much more likely to be requesting restoration of civil rights for the purpose of voting. That really sensitized me to the fact that voting means something different for different groups. People who have struggled for the right to vote, or whose parents struggled for the right to vote, are often highly sensitive to the idea of disenfranchising individuals and their broader community.

Question: There appears to be a substantial increase, in recent years, in the number of Minnesotans who are disenfranchised.

Yes, it's been quite a historical move upwards. Our prison population alone has risen dramatically in the past few years. The supervised release population is not supposed to be rising that quickly, but it certainly is, and I think that's partly a function of sentence length. In the criminal justice system there is what economists might call downward rigidity, where you can ratchet things up that it's very tough to bring them down. So we've introduced in Minnesota a felony strangulation statute which has had the effect of making domestic violence cases, in which there was any sort of choking, became a felony. Nobody is going to come out in favor of strangulation, right? But individuals incarcerated for those actions are no longer doing a few months in a county jail; they're doing time in a prison, or in a very long combined prison, probation, parole sentence.

DWI is another example, and that's affected quite a number of Minnesotans. To build a coalition around, say, "I think we're keeping some offenders too long in prison and we need to pare back those penalties" — it takes great political courage, even if it makes sense from a public safety side. There is always the potential danger that, boy, that one person that you let out will get drunk and kill somebody.

Question: Is there anything you'd like to add?

I have been working on criminal justice policy issues for a long time, and I think that the conversations we are having now are quite productive. I'm seeing far less demagoguery on crime issues, and more, well, let's try to work this out, let's try to figure out a way to balance the different rights and interests. Ten years ago, there was a much more knee-jerk kind of reaction, where there is no way we are going to lower any penalties, we are just going to jack them up. And what we ended up with is a very punitive criminal justice system.

We have to look at, well, given the best available scientific evidence, how is it likely to increase or decrease public safety? And then how are we going to balance and protect the rights of our citizens and the various constituent groups we have?

PHILIP CARRUTHERS

*Comments from the Director, Prosecution Division,
Ramsey County Attorney's Office*

Question: How is your point of view as a county attorney different than some of the proponents of the current legislation around the idea of a second chance?

As county attorneys and prosecutors, our duty is to the public at large, and not just the offender. If you're a defense attorney, for example, your only duty is to the offender. I'm not saying that (advocacy organizations) are not concerned about the public, but I think they tend to be more offender oriented. They're dealing with reentry issues, housing and employment, relative to that individual. I'm not saying that those issues don't have some implications for public safety — because they would certainly argue that if we don't have good reentry systems for offenders, they may go back to committing new crimes. So I do think that they are public oriented, but we are public oriented in a different way, probably more focused on public safety.

If you seal a criminal record through expungement, we're concerned about the public safety implications of that. If a person commits a new crime, is it going to be available for sentencing, is it going to be available for investigation purposes? Let's say that their new crime has a similar modus operandi. We are also concerned if they get into a job that may be a highly responsible job, where maybe they have access to money, or maybe they have access to new victims. So we have a lot of

concerns about those types of issues.

Question: What's your view of bill SF1231, that would change certain expungement requirements and procedures?

We're strongly opposed to it, especially in its current form.

Question: What's the concern about it?

It essentially sets up a judicial pardon. We have a pardon board in Minnesota. It's set up under the Constitution, and it's made up of the Governor, the Chief Justice, and the Attorney General, and they can pardon somebody. But judges don't have currently the power to pardon somebody, and essentially we see this as a judicial pardon. The problem is, we've got almost 300 judges in the state, and every judge is going to have different criteria, different standards, and there is no kind of central philosophy or public goal that would be carried out if it's up to a judge. The judges are going to

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Additional Resources and Links

"Arrest and conviction data are public for good policy reasons. A public court and criminal justice system are important protections against tyranny and injustice, and society has important interests in knowing who has been charged with or convicted of crimes."

The Minnesota County Attorneys Association Expungement Principles

<http://www.mcaa-mn.org/docs/2006/MCAAAExpungementPrinciplesAdopted1-20-06.pdf>

"The Commission concludes that since the use of arrest records as an absolute bar to employment has a disparate impact on some protected groups, such records alone cannot be used to routinely exclude persons from employment."

EEOC Policy Guidance on the Consideration of Arrest Records

http://www.eeoc.gov/policy/docs/arrest_records.html

"Black adults are four times as likely as whites and nearly 2.5 times as likely as Hispanics to be under correctional control. One in 11 black adults—9.2 percent—was under correctional supervision at year end 2007."

**I in 31: The Long Reach of American Corrections
The PEW Center on the States**

http://www.pewcenteronthestates.org/uploadedFiles/PSPP_Iin31_report_FINAL_WEB_3-26-09.pdf

"Our response to crime should be to arrest, charge, convict, and punish. But in some very limited cases our response can and should go one step further: some people have earned society's forgiveness and a fresh start in life."

"Going One Step Further: Forgiveness" by Minnesota State Senator Julianne Ortman

http://www.senate.leg.state.mn.us/senators/34Ortman/issues/0208JO_expunge_I.pdf

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try to do a good job, but every judge is different. It's kind of like instead of having laws passed by the Legislature as a whole, we start having laws passed by each individual legislator. We've got a lot of different points of view and there is not going to be uniformity.

So that's one concern. But if I could just take this issue further: we'd encourage there to be some general philosophy, and some minimum criteria, to qualify for an expungement. Things like the person has had a clean criminal record for at least five years, has successfully completed chemical dependency treatment and aftercare, has paid restitution to the victim, and just generally shown that they've made significant changes in their life. Under the current bill, those are factors that can be considered, but there are no minimums.

For example, somebody could come in and get an expungement for ten convictions, or three convictions. They could have a pending case under the bill. Now would a judge do that? Hopefully not, but it's totally discretionary with the judge. So we think there should be some minimum standards. It's in society's interest to encourage offenders to rehabilitate themselves, so why don't we say, "here's what you have to have done, so that you can prove you have rehabilitated yourself."

“Long periods of probation are usually tied to really, really serious crimes. So we're not talking about a bar fight. We're talking about a sex crime, or a really serious crime of violence.”

Question: I understand that in Minnesota, more so than in other states, people will often remain under court jurisdiction for an extended period after their release. As a result, some must wait a long time to reenter society. Is that desirable?

Long periods of probation are usually tied to really, really serious crimes. So were not talking about a bar fight. We're talking about a sex crime, or a really serious crime of violence. And that's another question: are there certain offenses that are so serious by their nature that were just going to say, sorry. Or there is a really long waiting period at least — things like murder, criminal sexual conduct cases.

Or one issue, drunk driving. Normally drunken driving stays on your record for five years, your probationary period may only be a year. Now why does it stay on your driving record for five years? Because insurance companies should be able to

evaluate that when they figure out how much your insurance is going to cost. Otherwise, those of us who don't have drunk driving, we are paying for that person who has a drunk driving conviction.

And, by the way, a lot of people get discharged early from probation. So that's another thing that you have to keep in mind.

We're not saying what the precise definition of this waiting period

should be. We are just saying there should be a waiting period. The details may have to be worked out — with some offenses, there are longer periods of probation. We are saying there should be some standards and some minimums in the law. It shouldn't just be totally discretionary.

Question: The county attorney's statement of principles suggests that because so much information is available on the Internet, expungement may have limited effectiveness and that the legislature may want to consider some alternatives. What might those alternatives be?

We are a criminal justice group; we don't normally deal with housing or employment. But you could have housing programs or employment programs, things like that. You can pass all the laws in the world, but it (a criminal history) is out there. Newspapers follow who's been charged with crimes. In small towns, everybody just knows. And you can try to regulate what these companies do, but in fact they are operating in the Cayman Islands, where Minnesota state government has no effective control over them.

So you could have programs that say: look, this is a person who had a drug problem but has rehabilitated himself — and we're not trying to hide that. But he is a different person than he was, and we are going to encourage certain housing opportunities by making him eligible for certain housing types, or some sort of subsidy. There are a lot of housing programs out there that encour-

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age the availability of housing. Have ones that include people who have rehabilitated themselves.

A certificate of rehabilitation is one of the ideas that is floating out there. That is something we support, in concept, because that seems like a realistic way to do it. You're not trying to put the horse back in the barn, when it's already three miles down the road. You are just being upfront and saying, "hey, this guy's got a conviction, but he's changed."

Question: Is there anything you'd like to add?

I think that this is an issue where it's easy to oversimplify it, and make the other side's position sound unreasonable or extreme. The bottom line is, we are not opposed to broadened expungement. We want to see offenders encouraged to rehabilitate themselves, and we are willing and eager to work with the legislators who are proposing these bills, and with advocates of broader expungement to come up with workable proposals that help offenders, but also protect the public. We are not opposed to all forms of expungement. It's just, what are the details, and what is society getting in terms of encouragement of rehabilitation?

MARK HAASE

Comments from the Director of Public Policy on Advocacy, Council on Crime and Justice

Question: When we think about our criminal justice system and policies that affect how those who are leaving the system may re-enter society, how does Minnesota compare with other states?

One thing that is really important to think about is that Minnesota does have one of the lower rates of incarceration in the country. We fall down in the 49th or 50th place in the percentage of people who are incarcerated. But the Pew Center on the States just came out with a report in March and it's called "One in 31." One in 31 Americans are under some form of correctional supervision, including people who are on probation or parole. And when you look at those numbers, Minnesota is actually 8th in the country in the percentage of people under some form of correctional supervision. One in 26 is the number in Minnesota. And the per capita rate in Minnesota under correctional supervision has increased by 278% since 1982.

We are good about not incarcerating people — which I think is good, they can usually do better when they are in the community and able to move on with their lives. But when you talk about the collateral consequences — both the statutory barriers, and the stigma that comes along with a conviction — those barriers are just as great for people who don't go to prison. So really you have to

look at that whole big number, and at racial disparities, also. Minnesota is up in the top of the country in a disproportionate number of minority populations who are under correctional supervision.

Question: What are the consequences of these policies for those with arrest or conviction records who are seeking employment?

Huge. I have somebody I am working with on expungement. When he was 19 years old he was convicted of burglary. He is now in his late 20s.

This individual has gone to apply at places, and they say if you have a felony don't bother to apply. Technically, I think that's a violation of the equal opportunity employment laws, because the EEOC has said that if employers make blanket exclusions it has a disparate impact.

Another person who was going to testify (at a Senate hearing) is a Navy veteran and was a Navy contractor after that. About 10 years ago he had a felony terroristic threats conviction, pretty much the only thing on his record. He recently was talking to employment service providers — non-profits that help place people — and a counselor said that based on this record, about the only thing he can do is be a cook. So its both statutory barriers, and the stigma, that's going to be more and



Mark Haase

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more a problem as the economy has problems.

Question: Has anyone proposed that we adopt legislation similar to Wisconsin's, that requires an employer to consider whether a conviction record is relevant to the job being sought?

Not currently. We're trying to find ways to get employers on board and to help them do the right thing. We have a program where we've developed a curriculum and do trainings for employers. And a (proposed) civil liability bill says that certain types of records can't be admitted in a lawsuit against an employer. An expansion of that in the future could be, if it's a felony over seven years old, then that can't be admitted into evidence either.

Question: What would you say to those who would argue that if a job applicant has been arrested a number of times — even if not convicted — that is something an employer should have a right to know?

They talk as though there are a lot of people running around with multiple arrests, and no convictions. There may be some. But people who we have coming in, who need help, also have some con-

“We’ve created this perpetual punishment cycle. In Minnesota there is currently no remedy for people who have taken the right steps, who have finished their sentence and they’re trying to rebuild their lives and do the right thing.

victions. If I was renting to someone and they had a lot of recent arrests, I guess I would maybe want to know about that. But on the flip side, arrests aren't supposed to mean anything — innocent until proven guilty. We have found in our research that African-Americans are much more likely to get those arrests and have them dismissed — that's how the police police some of those areas. They just pick up everybody who's involved, book them, and then let them go.

Question: Given the availability of data on the Internet, how practical is it to expunge a person's criminal record? Once information is on the web, isn't it out there for good?

That comes up a lot, and it's a legitimate concern — expungement is definitely not a complete remedy because of that. But sometimes it's brought up as an excuse not to do anything. A lot of employers do use the more reputable data collection companies — they generally update their records, and they use the BCA a lot. So expungement is not perfect, but it is helpful.

Question: How did we become eighth in the country in the number of people under correctional supervision? What has been responsible for that trend in Minnesota?

Our laws have gotten tougher, especially with respect to drug sentencing. It's a very politically popular for politicians to say they are getting tough on crime by

increasing penalties, and that's what we've been doing for the past 30 years. But if we keep making it harder and harder for people to move on from their past, to get jobs and housing, then the likelihood that they are going to reoffend is going to be greater.

We've created this perpetual punishment cycle. In Minnesota there is currently no remedy for people who have taken the right steps, who have finished their sentence and they're trying to rebuild their lives and do the right thing. Because of current expungement law, and because Minnesota doesn't have any certificate of rehabilitation, they are basically fighting against a conviction that could be 10 or 20 years old. We've got to have some kind of opportunity for people to move beyond that past.

Additional Resources and Links

“African Americans accounted for 72.3% of low level offense arrests, although there is little evidence that this is due to differential rates of involvement in criminal activities.”

“The existence of a criminal record creates a long-lasting barrier to employment and housing, and consequently serves as a significant contributor to the commission of new crimes by ex-offenders.”

Racial Disparities Initiative Key Findings and Recommendations

http://www.racialdisparity.org/report_s_key_findings.php

TODD LILJENQUIST

Comments from the Director of Government Relations, Minnesota Multi Housing Association (MHA)

Question: Does your organization have any particular position on the various bills that have been introduced to give offenders a second chance?

The only bill that we testified and took a public position on was Senate File 560. There is a specific provision or two in there that we had concerns about. In general, our concern is making it too easy to get rid of criminal history information. The presumption for all criminal information is that it is public — our concern is providing an avenue that would make it easier to reclassify that information, and either expunge it or restrict it to private. When our members go to do a background check on an individual prior to renting to them, that is information that we deem vital to making a decision whether or not they should be rented to.



Todd Liljenquist

Question: When you talk about information deemed as vital, are you talking about a conviction record, an arrest record, or both?

Definitely conviction information is vital, but also other types of non-conviction information, as part of the overall picture of the applicant. If someone has been arrested several times for drug dealing or something like that, that's information that our members would like to know. Although none of them may have

led to a conviction, it certainly paints a picture of someone. If they were arrested, there was at least probable cause to make an arrest, which means that some burden has been satisfied. It's information that we would like available, and for a number of reasons in addition to that. It's not necessarily our position, but I know other groups have said that in order to hold law enforcement accountable for the actions they undertake, you need to make the information available.

Otherwise you have private arrests, and people are being detained, and it's not public information. If a guy's been arrested for domestic assault several times, it awfully hard to proceed with any action against that particular individual, if the victim doesn't testify. So if a guy's been arrested several times for that, it at least allows for an informed decision for the landlord.

Question: Are there some reforms you might support, but not others?

We haven't taken a position on it, but we are neutral on the concept of a "certificate of good conduct" — the kind of deal where you say, I do

have a conviction for drugs. I dealt drugs a number of years ago, but this piece of paper here says I've gone through the process — I showed a court that I have reformed and satisfied all these requirements. Then it's all out in the public, and you're not sort of hiding information.

Question: What would you say about a situation in which someone got in trouble with the law when they were 19 or 20. Now they are 40 years old and they haven't done anything wrong for 20 years. Should a mistake they made when they were 19 still result in them not being unable to rent an apartment?

I would say a couple of things. There is currently a process for expungement, so if someone goes through those hoops and files a petition and is able to show a judge, "I

"The presumption for all criminal information is that it is public — our concern is providing an avenue that would make it easier to reclassify that information..."

have reformed, and here's what I've done, here are the steps I've taken," a judge does have the authority under the statute to expunge that. Number two, if it's been 20 years — if

someone dealt drugs or had a property damage conviction 20 or 25 years ago, and has been living at numerous properties since then and hasn't had any other issues, I find it hard to believe that anybody would refuse to rent to that person.

Because, in essence, when you do a background check and you see a gap

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between conviction and now, and that there was no additional criminal information available, well, that does show that they have done something to reform.

So there is an expungement process available, and on the other hand, the private market does work, in a lot of circumstances, if someone has shown, “Yes, I did do that, but I don’t have anything on my record since then.” Of course it depends on what the conviction was for — some of the predatory offender, sexual assault kinds of stuff, those are obviously in their own category.

Question: Are you saying that there are some crimes that are serious enough, that a landlord should not rent to this person?

I don’t want to say that, because I know that there are some properties that are equipped for that — the landlord understands the issue and he knows what he’s getting into, he’s fully informed, and maybe he is better equipped to handle a first degree murderer, a former felon. But the information should be available. I certainly don’t want to imply that there are some crimes that should make someone unrentable, because no doubt there are properties out there that will rent to them and they should. They do end up living somewhere.

A Sampling of Current Proposed Legislation

HF882: Admission of criminal history evidence limited in actions against private employers.

House Authors: Champion; Hayden; Thao; Clark
Companion: SF562
Senate Authors: Moua; Olson, M.; Latz; Higgins



HF545: Civil rights restoration notice required.

House Authors: Champion; Hayden; Hornstein; Lesch; Reinert; Hilty; Davnie; Persell; Mullery
Companion: SF 763
Senate Authors: Moua; Foley; Higgins

HF891: Expungement law expanded and modified, courts authorized to modify or suspend collateral sanctions under certain circumstances, and situations limited in which juvenile delinquency criminal record is publicly available.

House Authors: Champion; Hayden; Thao; Jackson; Davnie; Clark; Persell; Kahn
Companion: SF560
Senate Authors: Moua; Higgins

HF881: Civil rights of an individual upon release from incarceration restored, and notice required.

House Authors: Champion; Kahn; Hornstein
Companion: SF564
Senate Authors: Moua; Foley; Higgins

HF1044: Postsecondary institutions required to notify prospective students of the potential effects of a criminal conviction on future employment.

House Authors: Johnson; Paymar; Champion
Companion: SF537
Senate Authors: Latz; Moua; Pappas; Higgins

HF1043: Job applicant’s criminal history consideration addressed during the public employment hiring process.

House Authors: Johnson; Paymar; Champion; Kahn; Hornstein
Companion: SF538
Senate Authors: Latz; Moua; Rest; Higgins; Pappas

HF1126: Mandatory minimum sentence for repeat fifth-degree controlled substance offenders modified, and conditional release program modified to include an advisory board for consultation with the commissioner of public safety.

House Authors: Eastlund
Companion: SF635
Senate Authors: Ortman; Higgins; Moua; Latz

SF1097: Certificate of good conduct establishment for persons convicted or adjudicated delinquent.

Senate Authors: Moua; Betzold; Rosen; Latz
Companion: HF1924
House Authors: Champion

SF1231: Criminal records expungements laws recodification and restructuring and eligibility expansion.

Senate Authors: Latz; Ortman; Moua; Higgins; Betzold;
Companion: HF1858
House Authors: Lesch

By Rights...



Commissioner Korbel answers your human rights questions

CAN A LANDLORD EVICT FOR TOO MANY DOMESTIC ABUSE CALLS?

To the Commissioner:

My single daughter has been told she has to move out of her apartment, with her two children, because the police have had to respond to her apartment three times in the past year. The landlord gave her three copies of police reports, all domestic calls. I thought the state of MN protected tenants and that they could not be punished for calling upon the police for assistance in domestic abuse situations? Where can she get help before she is homeless?

The Commissioner says:

*The state Human Rights Act protects tenants from being evicted or suffering other adverse treatment because of their race, gender, national origin, familial status, and other characteristics specifically protected in the Act. But nothing in the Act prevents a landlord from deciding that a tenant is undesirable — and asking that tenant to move — for some other reason, including a history of police calls. It's unfortunate that your daughter has apparently been the victim of domestic abuse, and help is available for women in that situation from a variety of agencies. (You'll find some of those agencies listed on our web site at [*guide/women.htm\). But your landlord is probably not breaking any law by asking your daughter to move — though your daughter's rights as a tenant, and those of her landlord, would depend in large part on what it says in her lease. She may wish to contact a local tenant's union for more information about tenant and landlord rights and responsibilities.*](http://www.humanrights.state.mn.us/res-</i></p></div><div data-bbox=)*

CAN EMPLOYERS DICTATE FEMALE SKIRT LENGTH?

To the Commissioner:

My employer recently passed around a draft of a "Standards of Professional Behavior" and one of the guidelines states: no skirts above the knee. Are they allowed to tell us how long our skirts have to be?

The Commissioner says:

Courts have allowed employers to set dress and grooming codes, including provisions describing the clothing or appearance required even if employees do not wear uniforms. It's possible that in some circumstances an employer's requirements could amount to discrimination based on sex or religion or national origin, but it doesn't appear that not allowing above-the-knee hemlines would be a violation of the Minnesota Human Rights Act.

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To submit a question to this column, visit the Department's web site where the column regularly appears, or send your question to: The Minnesota Department of Human Rights, 190 East 5th Street, St. Paul, MN 55101. Attn: By Rights.

We will not publish your name or the names of individuals or companies you identify, but you must include your name and phone number.

Note: If you have a human rights question but would prefer that your question not be published, call the Department at 651-296-5663 or 1-800-657-3704 (toll free) and ask for Intake.

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DO EMPLOYEES CHARGING SEXUAL HARASSMENT HAVE A RIGHT TO KNOW WHAT ACTION WAS TAKEN?

To the Commissioner:

What must an employer tell a complainant regarding an investigation or action on a complaint? We have a Team Lead at work who has had numerous complaints lodged against him, including at least one of a sexual nature (he told an employee her problems with her boyfriend were probably because she didn't "put out" enough). He has also discriminated against an older female employee in favor of younger females with whom he could flirt, and created a hostile work environment for several female employees. He has also stated, "I am the man" when explaining why his is the only "right" opinion or way of doing a task. Our HR and managers say they can't tell us anything about their investigations of complaints we have brought. Two employees were forced to give written statements related to an incident related to this person, and one of them was written up based upon the written statement she was forced to give. Please let us know what our rights are!

The Commissioner says:

When an employer knows or should know that sexual harassment is occurring, the employer has an obligation under the state Human Rights Act to take timely and appropriate action to ensure that the harassment stops. The employer is not required under the Act to provide anyone, including those who complained of the harassment, with

information about how it chose to investigate the complaint or any other steps it may have taken to resolve the issue. As long as the harassment stops, the employer has met its obligation under the Act with respect to that behavior. You mention that one employee was "written up" based on information that employee was required to provide. We don't have enough information to comment about that situation. We would point out, however, that it is also a violation of the Human Rights Act for an employer to retaliate against an employee who complains of sexual harassment or aids in the investigation of an incident of alleged harassment. If you believe your employer has failed to stop the harassment, engaged in reprisal, or otherwise treated some employees adversely because of their race, sex, or another characteristic protected under the Act, you may want to contact our intake unit at 651-296-5663 or 1-800-657-3704.

ARE COST OF LIVING RAISES REQUIRED?

To the Commissioner:

I would like to know if there is a law in Minnesota that employers have to give at least a yearly cost of living raise to their employees? My friend has worked for four years for a company and never had a raise — I think that's horrible. I have encouraged him to go speak to his employer, but with the way the economy is lately he is just happy to have a job.

The Commissioner says:

There is no state law that requires an employer to provide a yearly cost of living raise — or any raise at all, at any interval. As long as the employer is paying at least the minimum wage required by Minnesota law (currently \$6.15 per hour for larger employers and \$5.25 for

smaller employers), the employer can generally give or deny raises as the employer sees fit, unless there is a union or other contract that requires cost-of-living adjustments. There would be a potential violation of the law we enforce, the Minnesota Human Rights Act, only if the employer chose to discriminate with respect to compensation, based on a characteristic protected under the Act. For example, if an employer gave raises to employees of a certain race or gender, but not to employees of another race or gender — and race or gender was the reason for this discrepancy — that could be illegal. But one of the characteristics protected under the Act is the reason a raise has been denied, the employee probably has no recourse, other than to look for a better-paying job.

CAN YOU BE PAID LESS BECAUSE YOUR SPOUSE WORKS FOR THE SAME PLACE?

To the Commissioner:

I and my wife both work for the same government entity. I believe I am being paid less, and treated differently than other employees, simply because we both work there. I have been a good employee, never late, always do what I am asked to do, and I am getting very tired of it.

The Commissioner says:

With the possible exception of insurance benefits, your employer cannot pay you less than you would be paid otherwise, or treat you adversely with respect to other terms and conditions of employment, just because your wife happens to work for the same employer. Whether you and your wife work for a government

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entity or in the private sector, it is a violation of the Human Rights Act for an employer to base you or your wife's compensation on marital status — including the fact that you are married to another employee. As a neutral investigative agency, we cannot determine whether an individual situation involves a violation of the Act without getting all the facts. But if you believe you are being paid less because your wife is a co-worker, you may want to contact our intake unit at 651-296-5663 or 1-800-657-3704.

MUST CITY ACCOMMODATE A PREGNANT POLICE OFFICER?

To the Commissioner:

I have a friend who is a city police officer. She is five months pregnant and still working “the street.” She has asked her employer if there was a way to find work within the department that would be safer for her and her unborn child, less physically draining on her body, until the child is born. The department does not have a “light duty” policy in place and is unwilling to make accommodations for her. Does she have any legal rights?

The Commissioner says:

A city police department, like any other employer, is required under the Human Rights Act to make a reasonable accommodation for an employee's pregnancy, as long as it can do so without an undue hardship. A reasonable accommodation might involve transferring a pregnant employee to a position or assignment with duties that are less physically demanding (if such a position is available), or granting a leave of absence. If your friend believes her employer could reasonably accommodate her pregnancy but is refusing to do so, we suggest she contact our Intake Unit at 651-296-5663 or 1-800-657-3704 to discuss filing a charge of discrimination.

EVICTED FOR THE CRIMES OF A ROOMMATE?

To the Commissioner:

My 23-year-old son and one of his roommates were evicted from their apartment because a third roommate was busted for selling drugs. My son and the other roommate had no idea that the third person was involved in this, and now the two innocent young men are unable to find anyone to rent to

them. In my mind they are being discriminated against because of the actions of the third person. What are their rights? Can we get any help for these two young men?

The Commissioner says:

It is unfortunate that your son is finding it difficult to rent an apartment because of his association with another individual, but there appears to be nothing illegal in the reluctance of landlords to rent to him. Under the law we enforce, the state Human Rights Act, it is illegal for a landlord to discriminate against a tenant or potential tenant on the basis of certain specific characteristics; these include race, color, creed, religion, national origin, marital status, disability, sexual orientation, familial status and a few others. It would also be illegal for a landlord to refuse to rent to a tenant because he or she associated with a person whose race, color, creed, or other protected characteristic was not to the landlord's liking. But a landlord can choose not to rent to a potential tenant for just about any reason that's not specifically illegal, whether or not that reason seems fair. While your son appears to be an unfortunate victim of “guilt by association,” landlords who view your son in those terms and decline to rent to him aren't necessarily breaking any law.

*Upcoming
MDHR
Trainings and
Showcases*

Month	Event	Location
April 29	Training Showcase	Red Wing
May	Community Forum	Willmar
June	Community Forum	Brainerd
July	Training Showcase	Duluth
August	Training Showcase	Dakota County
September	Community Forum	Winona
October	Training Showcase	Austin
December 4	Human Rights Day Conference	St. Paul

Check the Department's web site for dates and times to be determined and the latest information on upcoming events.

MDHR COMMUNITY PARTNER PROFILES

The Department of Human Rights works collaboratively with community partners committed to our common vision of a discrimination-free Minnesota. This month, we introduce five agencies that share our educational and outreach goals.



The League of Minnesota Human Rights Commissions, founded in 1972 and reorganized in 1987, is a coalition of local human-rights commissions that have been established by charter or ordinance in communities throughout Minnesota. While its member commissions are public organizations, the league is a private, nongovernmental organization with 501(c)(3) classification under the IRS code. Grants and gifts to the league are tax deductible.

The league is the only private, state-wide agency concerned with fighting all forms of illegal discrimination, and with enhancing the rights of all groups of people defined under the Minnesota Human Rights Act.



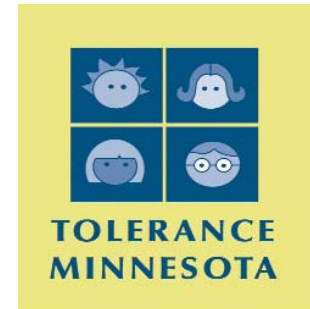
The Advocates for Human Rights is a non-governmental, 501(c)(3) organization dedicated to the promotion and protection of internationally recognized human rights. With the help of the more than 600 active volunteers who contribute an estimated \$3.4 million annually of in-kind services, The Advocates documents human rights abuses, advocates on behalf of individual victims, educates on human rights issues, and provides training and technical assistance to address and prevent human rights violations.



The Human Rights Resource Center is an integral part of the University of Minnesota Human Rights Center and works in partnership with the University of Minnesota Human Rights Library to:

- Create and distribute Human Rights Education (HRE) resources via electronic and print media;
- Train activists, professionals, and students as human rights educators;
- Build advocacy networks to encourage effective practices in human rights education;
- Support the World Programme for Human Rights Education (2005-2007) and the United Nations

Decade for Human Rights Education (1995-2004).



Founded in 2001 by the Jewish Community Relations Council, Tolerance Minnesota promotes understanding of cultural, racial and lifestyle differences through innovative diversity education and professional development training. Our goal is for all students, educators and community members we reach to have an understanding of the diverse individuals and groups in their community, respect for themselves and others, and the courage to confront prejudice.



Advocating Change Together (ACT) is a grassroots disability rights organization run by and for people with developmental and other disabilities. ACT's mission is to help people across disabilities to see themselves as part of a larger disability rights movement and make connections to other civil and human rights struggles.