

MITCHELL HAMLINE SCHOOL OF LAW SUMMER 2020 COVID-19 LEGAL RESPONSE CLINIC

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This essay is a reflection on lawyering in a time of crisis. It details the Mitchell Hamline School of Law Clinical Faculty's response to the community needs resulting from the COVID-19 pandemic by creating the COVID-19 Legal Response Clinic. It also recounts the impact of the murder of George Floyd and the long overdue national reckoning with systemic racism, sparked in our city. Additionally, against this backdrop, it examines the trauma-informed approach taken in clinical work and the classroom to help students process their own trauma and apply this approach in their work with clients.

Amid these concurrent crises in our city and country, five clinicians and eleven law students came together through the COVID-19 Legal Response Clinic to serve the community, working on a variety of issues including domestic violence, unemployment, workplace safety, and conditional medical release from prison. With the passage of time, this essay reflects, one year later, on the experience of renewed purpose and optimism through caring for our community, our students, and each other in an otherwise dark and challenging time.

INTRODUCTION

When the COVID-19 pandemic dramatically altered law school as we know it, the clinical faculty at Mitchell Hamline School of Law in St. Paul, MN, like so many others, felt compelled to respond to the needs of our community. Our general goals with the Summer 2020 COVID-19 Legal Response Clinic involved providing our students (and ourselves) a meaningful opportunity to use their legal skills to respond to the collateral consequences of the pandemic. Following the

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killing of George Floyd across the river in Minneapolis, we needed to shift and adjust our goals to respond to the needs of our students and our community in the Twin Cities. To accomplish these goals, we recognized the need to be flexible and responsive to the ever-changing circumstances of the pandemic and long overdue national reckoning with systemic racism sparked in our city. We needed to collaborate and play to our individual strengths. And we needed to step outside of our comfort zones to make the greatest impact.

This essay details the formation and implementation of the COVID-19 Legal Response Clinic. It explores some of the specific legal issues we worked on, including domestic violence, unemployment, workplace safety, and conditional medical release from prison. It reflects on the services we provided, the lessons we learned, and the growth that stemmed from our collective experience. It also details our experience navigating the aftermath of the murder of George Floyd, which occurred in our community the week before our first clinic seminar class. Finally, it concludes with discussion of our clinical faculty's strengthened commitment to trauma-informed lawyering and resilient legal practice.

I. THE FORMATION AND IMPLEMENTATION OF THE COVID-19 LEGAL RESPONSE CLINIC

As individual clinicians, we observed the impact of the pandemic on our unique practice areas. In late March of 2020, our Legal Assistance to Minnesota Prisoners (LAMP)/Reentry Clinic was working for the conditional medical release of incarcerated people. Our Child Protection Clinic was working to “reopen” visitation between parents and children in the child welfare system. Our Medical Legal Partnership (MLP) Clinic prepared a resource list outlining eligibility criteria for federal Coronavirus Aid, Relief and Economic Stabilization Act (CARES Act),¹ state, and local emergency benefits to help undocumented immigrants and mixed-status families access available COVID financial assistance. Students in the MLP Clinic also explored providing assistance to frontline healthcare workers with emergency planning, including preparation of power of attorney and healthcare directive forms.

We also recognized there were many emerging legal needs originating from the pandemic that our clinics were not addressing but were well-situated to address. We worried about the increase in unemployment and the forecasted “tsunami of evictions.” With the passing

¹ Coronavirus Aid, Relief and Economic Stabilization (CARES) Act, Pub. L. No. 116-136, 134 Stat. 281 (2020).

of the CARES Act, we recognized many people would need help accessing the relief it afforded them. As we all sheltered in place, we worried about survivors of domestic violence and what it meant for them to “stay safe” at home when home was not safe. After the initial shock of the pandemic settled, in late April 2020 at a clinical faculty meeting, someone raised the idea of offering a COVID-19 legal response clinical course over the summer of 2020 to continue our ongoing clinic work and afford students an opportunity to be responsive to emerging legal needs.

The Mitchell Hamline clinical faculty has always been a collegial and supportive group. The ultimate success of the COVID-19 Legal Response Clinic was well-grounded in our collaborative nature. We were able to play to our individual strengths to divide and conquer. While one of us wrote a grant to get money for a student worker, another tapped into their relationship with a local legal aid office to secure a steady stream of cases. At the same time, another one of us drafted a proposal for our curriculum committee, and another developed a plan for structure and cohesion of the course during our weekly seminar. The experience of co-teaching with five clinicians in total provided each of us a window into our colleagues’ teaching and supervision styles that could not be replicated simply with conversations about our work. We were able to pull the clinic together so quickly because each faculty member brought different strengths. As a result, we all grew professionally in the process.

By mid-May 2020, we felt confident that we would have a steady case stream and a meaningful seminar component for the clinic.² However, we had no idea if we would find enough students to fill the ten spots for the course. When we were ready to open enrollment for the clinic—two weeks before the start of our summer term—we realized we had one final question left to answer: could blended students take this clinic?³ Given that the courts in Minnesota were operating remotely in many circumstances, we felt confident that we would have enough legal work for our students who lived outside of the Twin Cities Metro Area or in a different state.⁴

² See *infra* Part IV & V.A.2.

³ The term “blended student” refers to students in a unique enrollment option at Mitchell Hamline. In January 2015, Mitchell Hamline became home to the first ABA-accredited JD program to offer significant online instruction. Students in the blended program come to campus for intensive weeks of instruction but complete the bulk of their classwork in remote, asynchronous modules. Since its inception, students in our blended learning program have had experiential opportunities through externships and residencies in their communities; however, the clinical faculty have grappled with how to offer a robust clinical experience to our blended students.

⁴ One of the many lessons we learned during this experience was that we actually could have offered a direct representation clinic to our blended students all along, because

Two weeks before our first class, we posted an announcement to our student body that we were offering the COVID-19 Legal Response Clinic and that blended students could register for the course. We were blown away that within five hours of posting, the clinic was not only at capacity but also had a sizable waitlist. Even more impressive, nine of the ten students enrolled were from our blended program. Our students came from Minnesota, Illinois, Texas, Nevada, Colorado, and Oregon, and brought with them a wealth of diversity. Working with this group was inspiring and reenergizing during a very challenging time.

II. A SECOND CRISIS IN OUR BACKYARD – THE KILLING OF GEORGE FLOYD AND THE AFTERMATH IN MINNEAPOLIS

As we were finalizing preparations for the course, our community experienced a world-changing event. On Memorial Day, May 25, 2020, George Floyd died after Minneapolis Police Officer Derick Chauvin knelt on his neck for nearly ten minutes.⁵ Within 24 hours of his death, video footage shot by a bystander went viral and people around the world watched in horror as George Floyd struggled to stay alive, infamously gasping “I can’t breathe” while Officer Chauvin continued to kneel on his neck. The murder of George Floyd quickly sparked one of the largest movements demanding racial justice since the civil rights movement of the 1960s, with protests demanding “Justice for George” springing up around the world.⁶

While the uprising following the death of George Floyd was a global movement, for those of us in the Twin Cities, this was a crisis in our own backyard. The site of George Floyd’s killing, Cup Foods on the corner of 38th Street and Chicago Avenue in the Powderhorn neighborhood of South Minneapolis, is less than ten miles from Mitchell Hamline School of Law. Additionally, four of us who taught the COVID-19 Legal Response Clinic live in Minneapolis and experienced the uprising and unrest immediately following George Floyd’s death firsthand as residents of the city.

Because we live in the Twin Cities, we also saw that the immediate aftermath in Minneapolis was far more nuanced and complex than how it was portrayed in national media. The vast majority of those

in Minnesota, unemployment insurance denial hearings are telephonic.

⁵ Nicholas Bogel-Burroughs, *Prosecutors Say Derek Chauvin Knelt on George Floyd for 9 Minutes 29 Seconds, Longer Than Initially Reported*, N.Y. TIMES, Mar. 30, 2021, <https://www.nytimes.com/2021/03/30/us/derek-chauvin-george-floyd-kneel-9-minutes-29-seconds.html>.

⁶ Damian Cave et al., *Huge Crowds Around the Globe March in Solidarity Against Police Brutality*, N.Y. TIMES, June 9, 2020, <https://www.nytimes.com/2020/06/06/world/george-floyd-global-protests.html>.

who took to the streets were peaceful protesters led by community activists who strategically employed civil disobedience, like marching on the freeway or violating state and local curfews, as part of their strategy to draw attention to their cause.⁷ We also observed that some small-scale property damage by protesters occurred after police escalated the situation by firing tear gas and rubber bullets into the crowds.⁸ There were also bad actors and opportunists⁹ who engaged in larger scale property destruction, including setting fire to the Minneapolis Third Precinct Building, the police precinct where George Floyd's murder had occurred,¹⁰ to sow further unrest.

With the course set to begin on Tuesday, June 2, immediately following weeklong protests and unrest in Minneapolis, we knew that we needed to retool the structure of the first session of the course, both to process our own trauma and to help guide students through trauma triggered by the death of George Floyd.

III. TRAUMA STEWARDSHIP AS A CRITICAL LEGAL SKILL

The murder of George Floyd and its aftermath exacerbated the crisis experienced in our community and lent a whole new meaning to lawyering in a time of crisis. Under that soul-crushing framework, we contemplated what lawyering in a time of crisis means, and an inherent tension arose. By virtue of being lawyers, we have a professional obligation for the quality of justice,¹¹ and we are uniquely situated to help some of the most marginalized members of our society. With this great power comes great responsibility. One of the best parts about being lawyers is, if we do our jobs well, we are able to help people by making a tangible difference in the lives of individuals and our com-

⁷ See *Floyd Protests: Protesters March, Block Traffic; Walz Extends Curfew*, MPR NEWS (May 31, 2020, 1:22 PM), <https://www.mprnews.org/story/2020/05/31/floyd-protests-more-than-55-arrested-in-protest-walz-extends-curfew>.

⁸ See Ryan Faircloth, *Rubber Bullets, Chemical Irritant, Water Bottles in Air as Thousands March to Protest George Floyd's Death*, MINNEAPOLIS STAR TRIB., May 27, 2020, <https://www.startribune.com/rubber-bullets-chemical-irritant-water-bottles-in-air-as-thousands-march-to-protest-george-floyd-s-d/570786992/>.

⁹ Investigations and arrests that followed the unrest in Minneapolis showed that some charged with the burning of the Minneapolis Third Precinct Building had ties to the Boogaloo Bois and other white supremacist groups. See Liz Sawyer, *Brainerd Man Sentenced to 4 Years for Minneapolis Police Station Fire During Floyd Protests*, MINNEAPOLIS STAR TRIB., Apr. 28, 2021, <https://www.startribune.com/brainerd-man-sentenced-to-four-years-in-federal-prison-for-role-in-burning-minneapolis-police-third/600051280/>.

¹⁰ Andy Mannix, *Minneapolis Police Station Set on Fire; Protesters March Downtown*, MINNEAPOLIS STAR TRIB., May 29, 2020, <https://www.startribune.com/minneapolis-police-station-set-on-fire-protesters-march-downtown/570849592/>.

¹¹ MODEL RULES OF PROF'L CONDUCT pmbl. 1 (2020) ("A lawyer, as a member of the legal profession, is a representative of clients, an officer of the legal system and a public citizen having special responsibility for the quality of justice.")

munities. In embarking on work advocating for those in crisis, we also knowingly put ourselves in the lives of others in moments where they are experiencing tremendous trauma and inevitably experience trauma ourselves.¹² When a person encounters the trauma of others on a regular basis over an extended period of time, it is utterly foreseeable and completely normal that they will experience the negative effects of vicarious trauma.¹³ It is well documented that lawyers are at an increased risk to experience vicarious trauma,¹⁴ both because of indirect exposure to the trauma of our clients and our work within the systems that often yield unjust results for our clients.

When we met to finalize our plan for the first class, it was evident that to varying degrees, we were all experiencing the negative effects of direct and vicarious trauma. It became clear there was no way we would be able to entirely mask the emotional toll the preceding months and week in Minneapolis had taken on us while effectively teaching the seminar. At its core, the legal profession is a helping profession. Unlike many other helping professions, we do not do a sufficient job integrating trauma stewardship into our curriculum.¹⁵

¹² Trauma occurs when an event causes harm or an extreme threat of harm is experienced in a manner that has long-lasting adverse effects on an individual. U.S. DEP'T OF HEALTH & HUMAN SERVS., SUBSTANCE ABUSE & MENTAL HEALTH SERVS. ADMIN., CONCEPT OF TRAUMA AND GUIDANCE FOR A TRAUMA-INFORMED APPROACH 9-12 (2014) (defining the “three E’s of trauma: event, experience, and effect”). Trauma is not just a past event, but the imprint that experience leaves on the mind, brain, and body. BESSEL VAN DER KOLK, *THE BODY KEEPS THE SCORE: BRAIN, MIND, AND BODY IN THE HEALING OF TRAUMA* 21 (2014). Trauma “diminishes a person’s capacities to cope, as it elicits intense feelings of fear, terror, helplessness, hopelessness, and despair often subjectively experienced as a threat to the person’s survival.” Melanie Randall & Laura Haskell, *Trauma-Informed Approaches to Law: Why Restorative Justice Must Understand Trauma and Psychological Coping*, 36 DALHOUSIE L.J. 501, 507 (2013).

¹³ Vicarious trauma “refers to harmful changes that occur in professionals’ views of themselves, others, and the world, as a result of exposure to the graphic and/or traumatic material of their clients.” Katie Baird & Amanda C. Kracen, *Vicarious Traumatization and Secondary Traumatic Stress: A Research Synthesis*, 19 COUNSELING PSYCH. Q. 181, 181 (2006). “The expectation that we can be immersed in suffering and loss daily and not be touched by it is as unrealistic as expecting to be able to walk through water without getting wet.” RACHEL NAOMI REMEN, *KITCHEN TABLE WISDOM: STORIES THAT HEAL* 52 (1996).

¹⁴ Lawyers are more at risk to suffer negative consequences of vicarious trauma than mental health practitioners. Grace Maguire & Mitchell K. Byrne, *The Law Is Not as Blind as It Seems: Relative Rates of Vicarious Trauma among Lawyers and Mental Health Professionals*, 24 PSYCHIATRY, PSYCHOL., & L. 233, 234-35 (2017); see also Ronald C. Tyler, *The First Thing We Do, Let’s Heal All the Law Students: Incorporating Self-Care into a Criminal Defense Clinic*, 21 BERKELEY J. CRIM. L. 1, 7 (2016).

¹⁵ Sarah Katz & Deeya Haldar, *The Pedagogy of Trauma-Informed Lawyering*, 22 CLIN. L. REV. 359, 363 (2016) (recognizing preventing vicarious trauma as one of four key components of trauma-informed lawyering). The term “Trauma Stewardship” appears to be coined in one excellent resource for teaching law students how to take care of themselves while taking care of others. While not exclusively about lawyering, the insights are profound. See LAURA VAN DERNOOT LIPSKY & CONNIE BURK, *TRAUMA STEWARDSHIP:*

Prior to the murder of George Floyd, we had titled the initial seminar class on the syllabus as “*Lawyering in a Time of Crisis*.” We made this decision in early May 2020, given our clinic work was grounded in the dual health and economic crisis that arose due to the COVID-19 pandemic. The day before our first class, exactly one week after George Floyd’s death, it became clear that we needed to rework our first classroom seminar to provide students with a safe space to process the events of the preceding week. Additionally, because several of the students enrolled in the clinic were people of color, we knew it would be irresponsible to not directly address the murder of George Floyd and the resulting trauma it caused our students. We were also aware that the act of addressing the murder in the law school classroom so close in time to the event may be, in and of itself, triggering to our students so we took steps to balance the need to address it and the harm that might come from addressing it. We gave students advance notice that we would be discussing the murder in class. We began class with a “courageous space” statement, and we made it clear that students were allowed to make any choice they needed to take care of themselves, including having screens off or leaving class at any point in the conversation about the murder and the aftermath.

From the outset, we also made an intentional decision in the COVID-19 Legal Response Clinic to make trauma-responsive lawyering skills a focus in two of our eight seminars. Under the circumstances, anything less than that felt borderline inadequate. In our second week of class, Miriam Itzkowitz, a licensed social worker and our colleague in the Institute to Transform Child Protection, taught a primer on trauma-informed lawyering.¹⁶ From our perspective this includes taking a client-centered approach to representation by modifying the Substance Abuse and Mental Health Service Administration (SAMHSA) principles of trauma-informed care to fit the lawyer-client relationship.¹⁷

We also recognize that attending to one’s own trauma and vicarious trauma is inherent to being a trauma-informed lawyer. So, in our final class, Miriam led our students through grounding mindfulness

AN EVERYDAY GUIDE TO CARING FOR SELF WHILE CARING FOR OTHERS (ed. 2009).

¹⁶ One of our clinical programs housed in the Institute to Transform Child Protection is fortunate to have Miriam Itzkowitz, MSW, LICSW, as the Director of Trauma-Informed Care. We owe a debt of gratitude to Miriam for supporting our clinical faculty and students in our journey to become trauma-informed practitioners.

¹⁷ The six key principles of a trauma-informed approach are: safety, trustworthiness and transparency, peer support, collaboration and mutuality, empowerment, voice and choice, and recognizing cultural, historical, and gender issues. U.S. DEPT. OF HEALTH & HUMAN SERVS., *supra* note 12, at 9-12.

exercises, “named” the concept of vicarious trauma, and allowed students a supportive space in a group setting to process some of the trauma they had experienced over the summer. We intentionally waited until our final class (our eighth seminar) to do this, because we wanted the group (students and professors) to trust each other enough to allow for a level of vulnerability that was safe and meaningful.

IV. STRUCTURE OF WEEKLY SEMINARS

The seminar component of the COVID-19 Legal Response Clinic occurred weekly over a period of eight weeks. In addition to the lessons focused on trauma and vicarious trauma detailed above, we explored how the pandemic impacted different areas of the law and different groups of people. We began with areas of law where we knew our students would ultimately gain practice experience in our clinic. Starting in the second week, we covered employment and unemployment issues, and in the third week we covered domestic violence. In the remaining five weeks, we covered housing issues, the plight of youth aging out of foster care, non-citizen issues, and medical release of incarcerated individuals. Additionally, once our students had cases, we dedicated time each week to case rounds. The students were passionately engaged each week in exploring problems and potential solutions to issues exacerbated by the pandemic. Because a different clinician taught the seminar each week, an added benefit was that we learned from each other as well. This experience strengthened our respect and admiration for the work of our colleagues.

V. CASEWORK IN THE COVID-19 LEGAL RESPONSE CLINIC

Over the course of the summer, students had the opportunity to work on unemployment benefit appeals, workplace safety issues, prisoner conditional medical release requests, and domestic violence orders for protection. We selected cases from these areas because they were well suited for clinical students during a shortened summer term and were responsive to urgent community needs in the summer of 2020. As set forth below, over the term, students gained considerable real-world experience and we, as clinicians, learned how to work remotely with students and our community partners to respond to emerging legal needs.

A. Unemployment Cases as a Part of the COVID-19 Legal Response Clinic

Most cases that the COVID-19 Legal Response Clinic undertook during the summer of 2020 were unemployment benefit appeals. Ini-

tially, the clinic had hoped to handle housing and eviction cases. However, the federal moratorium on evictions reduced the legal need for representation in housing and eviction cases in the summer of 2020. Ultimately, we pivoted and landed on unemployment cases. In part, the civil unrest, protests, and property damage in Minneapolis in May of 2020 left even more local individuals out of work due to business closures resulting from damage to businesses and property.

Unemployment cases proved to be great cases for students to work on because of their timeline and ability of students to make a significant impact in the lives of our clients with a manageable amount of legal knowledge and skills. We worked in tandem with our local legal aid office (Southern Minnesota Regional Legal Services, or “SMRLS”) to identify cases and coordinate intake.¹⁸ SMRLS also provided an initial training for students on the basics of Minnesota unemployment law.

1. *Responding to Federal and State Changes in Unemployment Benefits During the Pandemic*

In March of 2020, President Trump signed into the law the Families First Coronavirus Response Act (FFCRA).¹⁹ This law provided additional resources and flexibility for state unemployment insurance agencies to respond to the massive number of unemployment benefits being filed due to the COVID-19 pandemic. Additionally, the CARES Act was signed into law on March 27, 2020.²⁰ The CARES Act expanded states’ ability to provide unemployment insurance largely by making benefits available to workers who were not ordinarily eligible for unemployment benefits.²¹ The CARES Act also provided an additional \$300 per week for individuals eligible for at least one dollar in regular unemployment benefits between March 2020 and September 2021.²² An additional federal stimulus bill, the American Rescue Act, was signed into law last summer by President Biden in March 2021.²³

¹⁸ Southern Minnesota Regional Legal Services (SMRLS) provides free, high quality legal help to low-income people in critical civil matters. They provide legal assistance to individuals in St. Paul, Minnesota, and rural areas in Southern Minnesota, with offices located in both rural and urban areas. Last year they helped more than 10,000 individuals in Minnesota with civil legal issues.

¹⁹ Families First Coronavirus Response Act (FFCRA), Pub. L. No. 116-127, 134 Stat. 178 (2020); see also *Unemployment Insurance Relief During COVID-19 Outbreak*, U.S. DEPT. OF LABOR, <https://www.dol.gov/coronavirus/unemployment-insurance#fact-sheets> (last visited July 29, 2021) [hereinafter *Unemployment Insurance*].

²⁰ CARES Act, *supra* note 1; see also *Unemployment Insurance Relief During COVID-19 Outbreak*, *supra* note 19.

²¹ CARES Act, *supra* note 1, §§ 2012, 2014, 2017.

²² *Id.* § 2014.

²³ American Rescue Plan Act of 2021, Pub. L. No. 117-2, 135 Stat. 4 (2021).

This bill provides economic relief to most families in America through stimulus payments, expansions in unemployment benefits, and for the first time, a national child tax credit.²⁴ These anti-poverty measures could have historic levels of impact on families' overall economic well-being and are a reason to have hope for low-income families and workers who struggle to make ends meet.

In Minnesota, Governor Tim Walz implemented additional measures for working families and those left without work during the COVID-19 pandemic,²⁵ including amending portions of Minnesota's unemployment statutes.²⁶ One key change eliminated the non-payable week requirement (requiring the first week of unemployment eligibility to be unpaid) so that workers could begin receiving benefits immediately upon approval. These changes allowed individuals in Minnesota to apply for unemployment insurance more quickly and receive more money when they applied.

2. *Working in Tandem with the Local Legal Aid Office*

One of the benefits of the team approach to teaching and running this clinic were the connections that faculty had to local legal aid offices. In early May 2020, SMRLS had reached out to Jon Geffen (Director of the Reentry Clinic at MHSL and co-instructor of the COVID-19 Legal Response Clinic) to see if anyone at the law school could take on unemployment cases. SMRLS was reporting an increase of intakes for unemployment and was in a situation where they were turning away viable claims because they could not handle the volume.

Once we identified the partnership with SMRLS, we set up an intake process and procedure. We made the decision to hire a law student seeking employment as a summer clinic administrator. The student administrator set up an intake system and shared drive for all students and faculty working in the Clinic. This way we were able to track intakes, assign cases to students, see what cases had been resolved, and keep track of client contact and unemployment benefit information.

The administrator or a lawyer at SMRLS would do an initial intake with clients calling for help on their intake line. Once a case was identified as having a strong or viable claim, SMRLS would then send

²⁴ *Id.*

²⁵ See Minn. Exec. Order No. 20-05, Providing Immediate Relief to Employers and Unemployed Workers During the COVID-19 Peacetime Emergency (Mar. 16, 2020). This emergency executive order signed by Minnesota Governor Walz included immediate changes for applying for and accessing unemployment benefits. It also provided protections to employers by requiring that COVID-19 unemployment benefits paid by employers not be used in computing their future employment tax rate.

²⁶ MINN. STAT. §§ 268.001-268.98 (2020).

the client contact information, case type, and any additional intake information or documents to our student administrator. The administrator would then upload this information onto our shared drive. We had weekly case assignment and discussion meetings with all clinic faculty and the administrator. These meetings were productive and involved faculty choosing cases for their assigned students based on the student's current capacity, level of knowledge, and particular area of interest.

The clinic student assigned to a case would then make initial contact with their potential client. The student was then responsible for all aspects of the case.

3. Timelines and Potential for Impact Make these Great Student Cases

The often-short timeline between filing an unemployment claim, receiving a denial, and appealing that denial made these cases great for a summer law school clinic. Typically, once an appeal is filed (through the applicant's online unemployment benefit application account), a hearing is set within several weeks. In Minnesota, unemployment appeals are heard by Unemployment Law Judges (ULJ's).²⁷ All hearings occurred via phone, which was the practice in Minnesota even prior to COVID. As a result, clinic students working with clients on these cases could literally be anywhere in the country, making it possible for students in our blended learning program to participate in hearings where they lived.

One way that students were able to provide a huge impact to clients without much legwork was by simply calling the Minnesota unemployment hotline to inquire about pending claims that had been filed but not yet approved. In several cases, a student simply calling to follow up on a client's filed claim that had slipped through the cracks resulted in that client's unemployment benefits being approved or resuming after being suspended.

Another common problem that we found was clients not being able to readily access their Minnesota Unemployment Benefits account. The online system that the state set up to deal with filing and administering claims was not accessible to some workers in Minnesota who did not have easy access to the internet or reliable phone service when a question or problem arose.

SMRLS provided a comprehensive recorded training for students on Minnesota Unemployment Appeals. This training included a comprehensive summary of Minnesota law relating to unemployment ben-

²⁷ MINN. STAT. § 268.105, subdiv. 1 (2021).

efits and appealing benefit denials. Additionally, the new federal unemployment benefits under the CARES Act were a part of this training—and students were able to request both state and federal unemployment benefits for clients.

In order to qualify for unemployment benefits in Minnesota, an individual must be totally or partially unemployed (due to a restriction in working hours); have worked and earned a minimum number of hours of work covered by unemployment benefits during the last eighteen months; have lost their job through no fault of their own; and be available and ready to work.²⁸ Under Minnesota law, an employee who voluntarily leaves employment is not eligible for unemployment benefits unless they fit into one of the statutory exceptions. Similarly, a worker who is discharged is not eligible for unemployment if the discharge was caused by “employment misconduct.”

The most common type of denials that clients had related to whether they had voluntarily left employment or been discharged for misconduct. In cases where the client had voluntarily quit employment, much of the work students did in investigating and preparing their cases for hearing included looking for evidence that a client had voluntarily left employment but fit into one of the statutory exceptions. In cases involving alleged employee misconduct, students spent significant time investigating whether these allegations were accurate and collecting evidence to rebut the alleged misconduct. While working on these cases, students spent time interviewing their clients, researching the law, and investigating through witness interviews and a review of documents in the file, to determine whether the client had a basis for appeal. They then prepared for the hearing to appeal the client’s denial of benefits.

The hearings were ideal for students because they were relatively short and generally had few witnesses. The hearing was led by the ULJ, who took testimony from the claimant and other witnesses. The employer typically sent a representative to all hearings and if the employer failed to do so, we won on the spot. In all our hearings, the client presented testimony as the claimant. Preparing the client for hearing testimony was the largest part of the work that students did. In some cases, we found witnesses to come and testify on behalf of clients. Law students in the clinic also prepared these witnesses to testify at the hearing.

Cross examination of the representative from the employer provided challenges for several students. One student faced an employer who was disruptive, rude, and dismissive of the student’s questions.

²⁸ See Minn. Exec. Order No. 20-05, *supra* note 25.

Another learned information during the hearing that they had never heard before, which was negative for the client's case. When faced with these setbacks, students did a great job on the fly, trying to weave these new facts into the theory of the case.

All students had at least one unemployment appeal hearing over the course of their time in the clinic. Typically, during case rounds in the weekly seminar, we would hear from either a student with an upcoming hearing about their strategy or remaining questions or concerns they had ahead of the hearing, or from a student who had just completed a hearing. Sharing these case rounds during the latter half of class each week provided an opportunity for reflection, learning, and a chance to laugh.

Over the course of the clinic, eleven students handled forty-seven unemployment benefits cases. The types of employment situations varied, including food service, nursing homes, and private local companies. Outcomes on the cases varied, including some cases being resolved with just a phone call and conversation with the Minnesota Department of Employment and Economic Development (DEED) to get benefits restored or redirect a lost payment. At least ten cases went to appeal hearings where, in almost all cases, our clients prevailed.

B. Workplace Safety and the COVID-19 Pandemic

In March of 2020, as state and local governments issued stay at home orders impacting large segments of the workforce, there were categories of essential workers that did not have the option of staying home during the pandemic. These essential industries included health-care settings, grocery stores, large retailers, custodial services, warehouse workers, and meat processing plants.²⁹ For many working in these industries, they were faced with the choice of risking their health or losing their jobs. To their credit, some employers took steps on behalf of employees, including increased hazard pay and implementing safety measures, like mask mandates and social distancing, to protect workers.³⁰

However, these voluntary measures implemented by some employers proved to be insufficient. Many workers were unaware of their right to a safe workplace under state and federal law. With the lifting

²⁹ Minn. Exec. Order No. 20-20, Directing Minnesotans to Stay Home (Mar. 25, 2020), at 5-10.

³⁰ Melissa Repko, *Target Pays Bonuses, Hikes Pay by \$2 an Hour Amid Coronavirus-Induced Surge in Shopping*, CNBC (Mar. 20, 2020, 12:59 PM), <https://www.cnbc.com/2020/03/20/target-pays-bonuses-increases-pay-by-2-an-hour-as-coronavirus-causes-surge-in-shopping.html>.

of stay-at-home orders in late May 2020,³¹ around the time the COVID-19 Legal Response Clinic commenced, it was clear that part of the clinic's work in the summer of 2020 needed to address legal protections to guarantee workplace safety.

1. Individual Representation - Request for Accommodation to Limit Risk of COVID-19 Exposure

A portion of the COVID-19 Legal Response Clinic's work around the issue of workplace safety involved individual representation of clients in Minnesota who were denied unemployment benefits after refusing to return to work after their employer failed to provide a reasonable health-related accommodation to the employee. The issue in most of these cases was that, under Minnesota law, an employee is generally ineligible for unemployment benefits if the employee voluntarily terminated or quit employment.³² However, an exception under the law allows an employee to receive unemployment benefits if they voluntarily left employment for health-related reasons or after their employer refused to provide a reasonable health-related accommodation.³³

With the lifting of Minnesota's stay-at-home order, effective May 31, 2020, many employees in non-essential industries with significant interface with the public, including retail, restaurant workers, and education paraprofessionals, were being called back to work.³⁴ For employees who either had a chronic health condition, like asthma or heart disease, or had a household member with a chronic illness, the choice of whether to return to work presented a difficult decision. In essence, if they refused to return to work, the unemployment benefits they had received during the stay-at-home order would cease and they would potentially be ineligible to receive unemployment benefits because they had voluntarily quit employment. In the alternative, if they returned to work, they would be placing themselves or their household members at risk of serious illness or death were they to contract

³¹ Minn. Exec. Order No. 20-63, Continuing to Safely Reopen Minnesota's Economy and Ensure Safe Non-Work Activities During the COVID-19 Peacetime Emergency (May 27, 2020).

³² See MINN. STAT. § 268.095, subdiv. 1 (2021) (outlining ineligibility because of quit or discharge: "An applicant who quit employment shall be disqualified from all unemployment benefits according to subdivision 10. . .").

³³ Under Minnesota law, an employee remains eligible for unemployment benefits, even in cases where the employee voluntarily terminated employment, if the applicant quit the employment because the applicant's serious illness or injury made it medically necessary that the applicant quit, provided that the applicant inform the employer of the serious illness or injury and request accommodation, and no reasonable accommodation is made available. MINN. STAT. § 268.095, subdiv. 1(7) (2021).

³⁴ Minn. Exec. Order No. 20-63, *supra* note 31.

the virus at work. Additionally, many workers in Minnesota did not know they had the right to request a reasonable accommodation related to an employee's serious illness or injury, which could include requests to limit exposure to COVID-19. Applying this exception, which allowed employees to collect unemployment benefits where they had voluntarily left employment after their employer refused to honor a request for reasonable medical accommodation, was essential. Students in the clinic were able to counsel clients on how to request an accommodation and secure unemployment in cases where a request for accommodation had been denied.

2. *Workplace Safety and Inequities in the COVID-19 Pandemic – Race as a Public Health Crisis*

Preliminary data in the early days of the pandemic also showed alarming disparities in COVID-19 infection rates and deaths based on race. The Minnesota Department of Health's weekly COVID-19 Report for the week of May 28, 2020, showed significant disparities in per capita infection rates, with Black and Latino Minnesotans with infection rates that were ten times higher than that of White Minnesotans.³⁵ Bearing these inequities in mind, combined with the fact that people of color were more likely to work in essential industries with higher risk of exposure, the COVID-19 Legal Response Clinic knew it needed to engage in targeted efforts to promote workplace safety in communities of color.

3. *Outbreaks at Meat Packing Plants in Rural Minnesota and Efforts to Protect Workers of Color*

In April and May of 2020, many of the reported COVID-19 infections in Minnesota were traced back to outbreaks in meat packing plants in two rural Minnesota counties: Nobles County in Southwestern Minnesota and Stearns County in Central Minnesota. The first major outbreak occurred in late April 2020 at the JBS plant in Worthington, Minnesota, located in Nobles County, where over 600 employees tested positive for COVID-19 and one employee died after being infected.³⁶ The next month saw an outbreak at the Pilgrim's Pride plant in Cold Spring, Minnesota, where nearly 200 employees tested positive for the virus.³⁷ The outbreak at the Pilgrim's Pride plant was

³⁵ Minn. Dep't of Health, Weekly COVID-19 Report (May 28, 2020), <https://www.health.state.mn.us/diseases/coronavirus/stats/covidweekly22.pdf>.

³⁶ Adam Belz, Elizabeth Flores & Greg Stanley, *As Coronavirus Loomed, Worthington Pork Plant Refused to Slow Down*, MINNEAPOLIS STAR TRIB., May 16, 2020, <https://www.startribune.com/as-coronavirus-loomed-worthington-pork-plant-refused-to-slow-down/570516612/?refresh=true>.

³⁷ Phil McCausland, Jonathan Allen & Cyrus Farviar, *Cornavirus Hot Spot in Minne-*

also identified as a significant source of community spread in Stearns County. The first week of May saw a 454% increase in COVID-19 cases in Stearns County,³⁸ and by the middle of the month, Stearns County had the second highest number of confirmed COVID-19 cases and the highest infection rate per capita of any county in Minnesota.³⁹

These outbreaks at meat packing plants in rural Minnesota were even more troubling, considering the racial and ethnic make-up of the workforce of these plants in Minnesota and nationally. According to the Center for Economic Policy Research (CEPR), most meat packing plant employees in the U.S., including the workforce at the JBS plant in Worthington, Minnesota and the Pilgrim's Pride Plant in Cold Spring, Minnesota, are people of color and immigrants.⁴⁰ Specifically, the CEPR data found that 44% of frontline meat packing plant workers in the U.S. are Latino, 25% are Black, and 51% are foreign born.⁴¹

With a workforce predominantly comprised of immigrants and people of color, meat packing plant employees have historically been vulnerable to unsafe work conditions. This proved to be particularly true during the first wave of the COVID-19 pandemic. In the case of the JBS plant in Worthington, Minnesota, reports emerged that the plant continued to operate at full capacity until April 20, 2020, despite concerns raised by employees that they were being forced to work while sick.⁴² The plant was ultimately forced to shut down in late April, after several hundred employees contracted COVID-19 and were too ill to go to work.⁴³ Similar reports emerged about the situation at Pilgrim's Pride in Cold Spring, Minnesota, with employees noting that the company had downplayed the threat of the virus and had pressured individuals to continue working even when they felt sick or were showing symptoms of the virus.⁴⁴ Employees also reported that some Pilgrim's Pride workers were given fever reducing medication before the company nurse conducted temperature checks.⁴⁵ Despite these concerns raised by employees, Pilgrim's Pride refused to close

sota Connected to Surge of Cases at Meatpacking Plant, NBC (May 14, 2020, 5:00 AM), <https://www.nbcnews.com/news/us-news/coronavirus-hot-spot-minnesota-connected-surge-cases-meatpacking-plant-n1206176>.

³⁸ *Id.*

³⁹ Minn. Dep't of Health, *Weekly COVID-19 Report* (May 14, 2020), <https://www.health.state.mn.us/diseases/coronavirus/stats/covidweekly20.pdf>.

⁴⁰ Shawn Fremstad, Hye Jin Ro & Hayley Brown, *Meatpacking Workers are a Diverse Group Who Need Better Protections*, CTR. FOR ECON. & POL'Y RES. (Apr. 29, 2020), <https://cepr.net/meatpacking-workers-are-a-diverse-group-who-need-better-protections/>.

⁴¹ *Id.*

⁴² Belz, Flores & Stanley, *supra* note 36.

⁴³ *Id.*

⁴⁴ McCausland, Allen & Farviar, *supra* note 37.

⁴⁵ *Id.*

down the plant for a deep cleaning and to allow employees to complete testing and quarantine, insisting they were “following all CDC and OSHA issued guidance around safety and social distancing.”⁴⁶

Under both federal and state law, meat processing plant employees do have the right to a safe workplace and employers cannot retaliate against workers who complain about unsafe working conditions.⁴⁷ Specifically related to the pandemic, on May 13, 2020, Governor Tim Walz issued Executive Order 20-54 affirming the rights of workers to safe working conditions and protection from retaliation during the pandemic under existing Minnesota law.⁴⁸ Utilizing the power granted under existing law and Executive Order 20-54, the Minnesota Attorney General and other state agencies began actively investigating workplace violations at JBS, Pilgrim’s Pride and a number of other worksites around the state.⁴⁹ Minnesota Attorney General Keith Ellison also signed onto a letter with twenty other state attorneys general calling on the Trump Administration to take immediate action to ensure the health and safety of meat and poultry processing workers during the pandemic.⁵⁰

Recognizing the scope of the problem and vulnerability of the workforce at meat processing plants, the COVID-19 Legal Response Clinic undertook two actions to identify how the clinic could best assist impacted workers. First, to ensure efforts were responsive to the community’s needs, the clinic completed a series of interviews with community organizers actively working with impacted plant employees to identify existing needs and barriers faced by workers in asserting their right to a safe workplace. Clinic students and faculty also were in communication with the Office of the Minnesota Attorney General to assess how the clinic could collaborate with their office to ensure the safety of workers.

After these series of meetings, the clinic found that, despite public pressure and actions by state agencies, workers were not adequately protected and continued to fear retaliation for reporting unsafe conditions at their worksites. To address this situation, the COVID-19 Legal Response Clinic, in consultation with the Minnesota

⁴⁶ *Id.*

⁴⁷ See generally *MNOSHA Compliance: Novel Coronavirus (COVID-19)*, MINN. DEP’T OF LABOR & INDUSTRY, <https://www.dli.mn.gov/business/workplace-safety-and-health/mnosha-compliance-novel-coronavirus-covid-19> (last visited July 29, 2021).

⁴⁸ Minn. Exec. Order No. 20-54, Protecting Workers from Unsafe Working Conditions and Retaliation During the COVID-19 Peacetime Emergency (May 13, 2020).

⁴⁹ McCausland, Allen & Farviar, *supra* note 37.

⁵⁰ Press Release, Minn. Attorney General, “Essential Workers are not Disposable Workers”: Attorney General Ellison Urges President to Protect Meat-Packing Workers (May 12, 2020), https://www.ag.state.mn.us/Office/Communications/2020/05/12_EssentialWorkers.asp.

Attorney General's office, developed a survey seeking information about worksite conditions that could be administered to workers. The survey was available online in both English and Spanish and could be completed by workers on a smart phone or other electronic device to identify egregious worksite violations in real time. After the conclusion of the COVID-19 Legal Response Clinic, policy work to finalize and administer the survey continued in the MLP Clinic during the fall 2020 semester. Identifying problematic worksites as the source of an outbreak and direct harm to workers proved to be difficult, particularly in the fall of 2020, when there was wide community spread throughout Minnesota. The survey, however, did provide workers with a mechanism to anonymously lodge a complaint against their employer if proper safety measures were not being followed.

C. *When Staying Home Isn't Safe*

As we designed the COVID-19 Legal Response Clinic, one area of legal representation we wanted to make sure to include was representation of petitioners seeking protection from domestic abuse. We established a pipeline of cases through a volunteer lawyers' organization to give clinic students an opportunity to represent clients seeking orders for protection (OFPs). Two students opted to represent clients in domestic abuse cases, and we devoted one of our class sessions to some of the larger themes that arose from that representation. Four main issues were: (1) the dichotomy between public and personal safety; (2) the limitations of formal relief; (3) the possibilities of remote advocacy; and (4) the role of policing as a response to domestic abuse.

1. *Public and Personal Safety*

As previously noted, while the COVID-19 pandemic spread with speed and ferocity in the spring of 2020, the Minnesota governor issued a series of executive orders directing Minnesotans to stay at home.⁵¹ The Minnesota stay-at-home orders required all persons to "stay at home or in their place of residence" except to engage in certain exempted activities, such as seeking emergency services, engaging in socially distanced outdoor activities, caring for family members, or

⁵¹ Minn. Exec. Order 20-20, *supra* note 29; Minn. Exec. Order 20-33, Extending Stay at Home Order and Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation (Apr. 8, 2020); Minn. Exec. Order 20-48, Extending and Modifying Stay at Home Order, Continuing Temporary Closure of Bars, Restaurants, and Other Places of Public Accommodation, and Allowing Workers in Certain Non-Critical Sectors to Return to Safe Workplaces (Apr. 30, 2020).

shopping for groceries, gasoline, or other essential products.⁵² The stay-at-home orders, along with other restrictions on the operation of bars, restaurants, and other businesses, were dubbed the “Stay Safe Minnesota” plan. True to its name, Stay Safe Minnesota was based on the premise that the pandemic posed a threat to human life. With no preventive vaccine or medically known cure, the only way to slow the community spread of the virus was to impose drastic behavioral measures. Keeping everyone at home, sheltered in place, was the most immediate way to protect lives.

However, home is not a safe place when it is a site for domestic violence and abuse. As early as March 2020, several cities were reporting double-digit increases in calls to 911 or domestic violence hotlines, a phenomenon attributed to the isolation of victims in unsafe homes and mounting financial pressure and stress on abusers.⁵³ The pandemic was also associated with other disturbing trends, like an increase in gun sales among first-time buyers.⁵⁴ The sudden economic shutdown, the closure of public schools, and the general uncertainty of when things might reopen created conditions ripe for situational violence.⁵⁵ For domestic partners already locked into a cycle of coercive abuse, social isolation aggravated the avenues through which domination and control could be asserted.⁵⁶ Normal outlets for social interaction and temporary escape through work, religious community, or extended family were suspended. The very measures that were put into place to protect lives from a public safety perspective posed a threat to personal safety for individuals trapped in abusive homes.

1. *Limits of Formal Relief*

It has always been the case that the formal legal remedy provided by an order for protection does not guarantee protection. The success of formal legal remedies often depends on the existence of informal

⁵² Minn. Exec. Order 20-20, *supra* note 29, at 3-4.

⁵³ Madison Pauly & Julia Lurie, *Domestic Violence 911 Calls Are Increasing. Coronavirus Is Likely to Blame: Experts Worry that Social Distancing and Stay-at-Home Orders Are Exacerbating Abuse*, MOTHER JONES (Mar. 31, 2020), <https://www.motherjones.com/crime-justice/2020/03/domestic-violence-abuse-coronavirus/>.

⁵⁴ Richard A. Opiel, Jr., *For Some Buyers with Virus Fears, the Priority Isn't Toilet Paper. It's Guns*, N.Y. TIMES, Mar. 16, 2020, <https://www.nytimes.com/2020/03/16/us/coronavirus-gun-buyers.html>.

⁵⁵ See, e.g., Joan B. Kelly & Michael P. Johnson, *Differentiation Among Types of Intimate Partner Violence: Research Update and Implications for Intervention*, 46 FAM. CT. REV. 476, 485-87 (2008) (describing situational couple violence as resulting from “situations or arguments between partners that escalate on occasion into physical violence”).

⁵⁶ Jasmine Mithani, *What We Know About Crises and Domestic Violence—And What That Could Mean for COVID-19*, FIVE THIRTY EIGHT (May 4, 2020, 6:00 AM), <https://fivethirtyeight.com/features/what-we-know-about-crises-and-domestic-violence-and-what-that-could-mean-for-covid-19/>.

support systems, and the social isolation of the pandemic brought that lesson into sharp relief.

The pandemic response measures adopted in Minnesota attempted to accommodate the need to address domestic violence by keeping formal channels for relief open. The governor's executive orders defined workers supporting shelters for victims of domestic violence as essential workers, along with providers of legal services in domestic abuse matters.⁵⁷ The Minnesota Supreme Court issued an order designating family court domestic abuse proceedings as "high priority" cases to continue despite an initial suspension of most district court proceedings.⁵⁸ And legal services organizations continued to offer remote training, recruit volunteers, and refer cases through networks of pro bono attorneys.

Despite these efforts to keep formal channels of relief open, the pandemic response posed difficulties for clients seeking protection from domestic abuse. Many of the treatment or intervention programs that had formerly been available to perpetrators or couples were either shuttered or operating remotely. For persons undergoing changes in their domestic circumstances, the economic shutdown created additional challenges to doing anything different or new, such as changing jobs or finding alternative sources of childcare. With government offices operating remotely, it was sometimes difficult to accomplish even simple tasks like changing an address on a driver's license.

2. *Opportunities for Remote Advocacy*

The social distancing mandated by pandemic protocols pushed trial courts toward using remote and electronic platforms to conduct proceedings. Statewide judicial orders in Minnesota mandated remote court appearances in most civil cases and provided discretion for trial courts to use remote technologies in OFP cases.⁵⁹ During the summer of 2020, family court judges and referees in our clinic cases employed varying procedures. Some judges and referees in Hennepin County continued to schedule in-person hearings in the eerily deserted government center building, while others proceeded entirely remotely,

⁵⁷ Minn. Exec. Order 20-20, *supra* note 29, at 8-9.

⁵⁸ MINN. SUPREME COURT, ADM20-8001, CONTINUING OPERATIONS OF THE COURTS OF THE STATE OF MINN. UNDER A STATEWIDE PEACETIME DECLARATION OF EMERGENCY (Mar. 13, 2020).

⁵⁹ Although the initial statewide order included hearings for orders for protection on a list of hearings that "shall be held in the courtroom on an emergency basis," a follow-up order removed this specification, and clarified that OFP hearings fell within a more general classification of hearings that should be conducted in the courtroom "if the request for relief presents an immediate liberty concern, or where public and personal safety concerns are paramount" but could also be conducted remotely. *Id.*

using Zoom.

Zoom turned out to be a surprisingly nimble platform for evidentiary hearings. Parties offered evidence by using the “share document” function, and the judge offered break-out rooms for bench conferences or to allow attorneys to consult privately with their clients. The Zoom platform also offered a solution to a nagging logistical problem in domestic abuse cases: how to keep the petitioner and respondent separated from one another at and around the courthouse.⁶⁰ Prior to the pandemic, the Hennepin County Government Center asked petitioners and respondents to report to separate waiting rooms on the first floor of the courthouse, first calling the case in the petitioner’s waiting room and ensuring that the petitioner was seated in the courtroom before calling the case in the respondent’s waiting room. In remote hearings, there was no possibility—and hence no fear—that the hearing itself might become an occasion for unwanted contact.

The use of remote courtroom proceedings also opened new opportunities for our clinical program to include remote students in courtroom advocacy clinics. Students in the blended program get a healthy dose of simulation-based instruction during on-campus weeks and have been able to pursue externship placements in their home communities. However, their clinic participation had been limited to clinics doing transactional work. Because our advocacy clinics require appearing in court in person, students in the blended program were largely foreclosed from enrolling in them.

In the summer of 2020, all classes at Mitchell Hamline were held remotely, and students from the blended program mingled freely with students in the traditional “bricks and mortar” program. Our building was closed to classes, so the weekly clinic seminar, individual supervision meetings, and client meetings were held on Zoom. Because it was possible to select domestic abuse cases slated for remote hearings, blended learning students had the opportunity to prepare and present evidentiary hearings under the direct supervision of clinic faculty.

Though it remains to be seen what lessons domestic abuse courts will draw from their experiences during the COVID-19 pandemic, there are obvious public safety benefits to continuing to allow petitioners to proceed remotely to avoid contact with respondents. We learned that it is possible for students to get deep and meaningful experience honing their client counseling and courtroom advocacy skills under our direct supervision from a distance. The COVID-19 Legal Response Clinic opened our eyes to the possibilities of expanding

⁶⁰ Amanda Rabe & Megan L. Sprecher, *Representing Domestic Abuse Survivors*, 91 WIS. LAWYER 24, 27 (2018).

clinical opportunities for remote students in tandem with any technological changes to courtroom procedures that the pandemic experience ushers in.

3. *Role of Policing in Response to Domestic Abuse*

In late May 2020, the world was rocked by the murder of George Floyd at the hands of Minneapolis police officers, setting off a seismic wave of unrest, with Minneapolis at its epicenter. Less than two weeks later, a veto-proof majority of Minneapolis City Council members publicly pledged to “begin the process of ending the Minneapolis Police Department.”⁶¹ Although the exact parameters of the pledge were unclear, it ignited a wider community conversation about the appropriate role of police.⁶²

The relationship between law enforcement and domestic abuse has a long and fraught history. Historically, domestic abuse was viewed as private family matter outside the purview of law enforcement intervention.⁶³ In the 1980s, anti-domestic violence advocates pushed for reforms that would increase criminal justice intervention in domestic violence cases, such as mandatory arrest policies and no-drop policies for prosecutors.⁶⁴ However, as critics have noted, these mandatory criminal justice system interventions run counter to strategies of victim empowerment, agency, and self-determination at the heart of domestic violence programs.⁶⁵ Because the COVID-19 Legal Response Clinic was offered in the heat of ongoing community conversations about the role of policing in public safety, we had the opportunity to explore with a community-based anti-domestic violence advocate (who was a guest speaker in our seminar class), how the tensions at the heart of law enforcement responses to domestic violence were playing out in the context of these wider debates.

⁶¹ Liz Navratil, *Most of Minneapolis City Council Pledges to “Begin the Process of Ending” Police Department*, MINNEAPOLIS STAR TRIB., June 8, 2020, <https://www.startribune.com/mps-council-majority-backs-dismantling-police-department/571088302/>.

⁶² See Jon Collins & Brandt Williams, *After Pledging to Defund Police, Mpls. City Council Still Rethinking Public Safety*, MPR NEWS (Oct. 28, 2020, 10:54 AM), <https://www.mprnews.org/story/2020/10/28/after-pledging-to-defund-police-mpls-city-council-still-rethinking-public-safety>.

⁶³ Leigh Goodmark, *Law Is the Answer? Do We Know That for Sure?: Questioning the Efficacy of Legal Interventions for Battered Women*, 23 ST. LOUIS U. PUB. L. REV. 7, 13 (2004).

⁶⁴ *Id.* at 15-19.

⁶⁵ *Id.* at 30-33.

D. COVID-19 and Minnesota Prisons: It Was Only a Matter of Time

It is hard to imagine an environment that is more ill-equipped to deal with COVID-19 than a prison. Not surprisingly, as COVID-19 spread across the country in the spring and summer of 2020, many of the major outbreaks occurred in prisons and jails. In New York, Detroit, Chicago, and Ohio, incarcerated individuals were infected at astonishingly high rates. Nationally, incarcerated individuals' infection rates are three times higher than the national average.⁶⁶ For Minnesota's prison system, it was only a matter of time.

1. The Prison System in Minnesota Was Unprepared to Deal with a Pandemic

In Minnesota, it is widely known that many of the prisons are old, have poor ventilation, are cramped due to overcrowding, and provide substandard medical services.⁶⁷ Incarcerated individuals are historically less healthy than those living outside of the prison's wall.⁶⁸ Moreover, incarcerated individuals are unable to socially distance from one another, and some share cells with infected individuals. Even after the State of Minnesota initiated a ban on indoor dining, we learned that incarcerated individuals in one prison still ate side-by-side in groups of 200.

Mask wearing is also a problem in Minnesota prisons. Initially, incarcerated individuals informed us that the Minnesota Department of Corrections (DOC) did not provide everyone with masks. Then, as the DOC provided masks, we learned from incarcerated individuals and DOC staff that not all incarcerated individuals wore their masks. DOC staff also informed us that depending on the facility, the unit, and even the guard shift, not all guards required incarcerated individ-

⁶⁶ Eddie Burkhalter et al., *Incarcerated and Infected: How the Virus Tore Through the U.S. Prison System*, N.Y. TIMES, Apr. 10, 2021, <https://www.nytimes.com/interactive/2021/04/10/us/covid-prison-outbreak.html>.

⁶⁷ In comments to reporters, Minnesota Governor Tim Walz acknowledged longstanding issues in the prison system, stating "We all know that our antiquated and overcrowded prison system is just a hotbed for some of this (COVID-19 spread) to happen." Liz Sawyer, *As Coronavirus Outbreak Spreads, Minnesota Corrections Officials Look to Thin Prison Population*, MINNEAPOLIS STAR TRIB, Apr. 3, 2020, <https://www.startribune.com/as-coronavirus-outbreak-spreads-minnesota-corrections-officials-look-to-thin-prison-population/569364742/>; see also Kirsti Marohn, *As COVID-19 Spreads in Minn. Prisons, Loved Ones Worry*, MPR NEWS (Dec. 8, 2020, 10:00 AM), <https://www.mprnews.org/story/2020/10/06/as-covid19-spreads-in-minn-prisons-loved-ones-worry>.

⁶⁸ People in prisons and jails are disproportionately likely to have chronic health problems including diabetes, high blood pressure, and HIV, as well as substance use and mental health problems. Nevertheless, correctional healthcare is low-quality and difficult to access. See *Health*, PRISON POL'Y INITIATIVE, <https://www.prisonpolicy.org/health.html> (last visited Aug. 28, 2021).

uals to wear their masks. Not surprisingly, considering the politicized nature of mask wearing, many guards opted not to wear their masks during their shifts. Incarcerated individuals similarly informed us that while the DOC mandated mask wearing, many guards removed their masks or willfully wore them improperly and the DOC did not strictly enforce the mask mandate against its staff or incarcerated individuals.

Even some solutions to isolate infected individuals were misguided. Some prisons relocated sick individuals to solitary confinement to quarantine.⁶⁹ Solitary, as its name indicates, is a room where an incarcerated person is alone for up to 23 hours a day without their personal property or human contact. Since solitary is designed as a form of punishment, rooms have minimal amenities, no television, and limited or no natural light. It is, by all accounts, a horrible place. Accordingly, many sick individuals did not report to prison officials that they were ill.⁷⁰

During the height of the pandemic, the DOC initiated a quarantine system that required incarcerated individuals to remain in their cells for approximately 23 hours a day to reduce the spread of the virus. This measure further isolated incarcerated individuals from their loved ones and limited even basic daily human interaction. Incarcerated individuals who communicated with the clinic identified this restriction as being worse than potential exposure to COVID-19.

Throughout the pandemic, incarcerated individuals informed us that they struggled to obtain accurate information about COVID-19 and the rates of infection in prison. Incarcerated individuals do not have access to the internet or other means of obtaining current information. During the pandemic, the DOC cancelled all in-person visits, which further reduced the availability of information.⁷¹ Moreover, incarcerated individuals informed us that the prisons failed to provide them with information about the number of COVID-19 positive cases in their living unit or even their cell. As a result, every cough and sneeze were a sign of the illness and caused tremendous stress. As one can understand, prison is a stressful place even without the fear of contracting a potentially deadly virus. Despite DOC's efforts to curb infections, incarcerated individuals in Minnesota prisons contracted

⁶⁹ MN DOC officials and incarcerated individuals confirmed this practice to Mitchell Hamline clinical faculty.

⁷⁰ Several incarcerated individuals informed us that they opted not to report feeling ill to avoid DOC placing them in solitary.

⁷¹ Liz Sawyer, *Citing Coronavirus Fears, Minnesota Corrections Officials Suspend Prison Visits*, MINNEAPOLIS STAR TRIB, Mar. 12, 2020, <https://www.startribune.com/citing-coronavirus-fears-minnesota-corrections-officials-halt-prison-visitors-volunteers/568736032/>.

COVID-19 at rates 6 times higher than the general population.⁷²

2. Conditional Medical Release Project

As clinicians working with incarcerated individuals, we knew that COVID-19 would hit Minnesota's prisons hard. Corrections and public health experts agreed that the best way to reduce the chances of outbreaks in prisons and jails was to reduce their populations.⁷³

In May 2020, as the number of COVID-19 cases was on the rise, the Commissioner of DOC created a Conditional Medical Release (CMR) program that permitted the release of incarcerated individuals if the person: (1) had a medical condition that put the individual at a grave risk of harm if they contracted COVID-19; and (2) did not pose a risk to the safety of the community.⁷⁴

Those on CMR were still under the supervision of DOC and were not released from their sentence. Moreover, those on CMR were required to comply with electronic home monitoring and other restrictions.

Once announced, Mitchell Hamline clinical faculty anticipated that thousands of the 7,300 individuals incarcerated at Minnesota Correctional Facilities would apply for CMR.⁷⁵ We also anticipated that current DOC staffing could not accommodate and assist those seeking CMR with their applications. We raised this concern with the Commissioner, and he agreed to allow the LAMP and Reentry Clinic to help incarcerated individuals with information and apply for CMR.

Since it was the beginning of summer, the LAMP and Reentry Clinic did not have many students enrolled to assist in the CMR Project. We then met with the clinical staff from the University of Minnesota Law School and St. Thomas School of Law to locate students who could help with the CMR Project. After sending out emails to students at the law schools, approximately forty law students immediately volunteered to work on the project. We were elated and humbled by the students' eagerness to work on the project.

Over the next few weeks, the three Minnesota law schools worked with DOC and its Commissioner to create the CMR Project,

⁷² Beth Schwartzapfel, Katie Park & Andrew Demillo, *1 in 5 Prisoners in the U.S. has had COVID-19*, THE MARSHALL PROJECT (Dec. 18, 2020, 6:00 AM), <https://www.themarshallproject.org/2020/12/18/1-in-5-prisoners-in-the-u-s-has-had-covid-19>.

⁷³ Marohn, *supra* note 67.

⁷⁴ While CMR existed in statute prior to the pandemic, it was rarely used, and when it was used, it allowed terminally ill incarcerated individuals to return to their home in the waning days of their life. See MINN. STAT. § 244.05, subdiv. 8 (2021).

⁷⁵ This does not include local jails, juvenile facilities, ICE facilities or those incarcerated in a federal facility. While the federal court system has a "compassionate release" program, the CMR program did not apply to any other facility other than DOC facilities.

staffed by law student volunteers. The DOC distributed written informational materials that included a description of our services and the CMR Project's hotline number to all incarcerated individuals. The Commissioner permitted incarcerated individuals to telephone our hotline which was staffed by student volunteers. The DOC did not charge incarcerated individuals for the call and even agreed not to record or monitor the calls. These accommodations were important because incarcerated individuals may not have the money to make telephone calls and fear reprisal if they say anything negative about the DOC or a staff member.

Working with incarcerated clients is always logistically difficult. For example, incarcerated callers cannot leave a voice message if a person steps away or is on another line. Moreover, even if they could leave a message, you could not call them back. Accordingly, the CMR Project used a remote hotline telephone system that went to a central receptionist who transferred the call to one of several waiting law student volunteers. The CMR hotline kept regular office hours, and students were able to immediately talk to incarcerated individuals when they called.

Once connected, the law student assisted the individual by answering questions and completing the entire CMR application. Calls took anywhere from 20-120 minutes. Some individuals were acutely aware of their concerns and conditions, while others needed more prompting. In order to better serve the clients, the CMR Project conducted several Zoom trainings with the students to discuss best practices for interviewing and completing the CMR application. For example, a common medical condition cited by clients was asthma. However, not all asthma conditions are the same. Accordingly, we had a set of questions for those with asthma issues. Do you use an inhaler? Do you or have you ever used a nebulizer? Have you taken prednisone in the pill form? When?

Once students completed a CMR application, they would email it to the clinical faculty supervising the CMR Project for review. Once approved, the completed application was sent to the DOC to determine the applicant's eligibility for CMR.

Over the course of the summer, the CMR Project accepted over 500 calls from incarcerated individuals and their families. Students answered questions for concerned family members and incarcerated individuals and completed over 300 applications for CMR. After the first hectic month, the calls began to decline and the number of applications for CMR reduced to a trickle. The CMR Project reduced its hours for two weeks, then ceased operation in July 2020. Sadly, the DOC ended its CMR program in August 2020.

In total, the CMR Project filed 300 applications for CMR. The DOC received more than 1,800 CMR applications that did not involve the CMR Project. The DOC approved only 155 individuals for CMR; many of those approved worked with CMR Project student volunteers.

As one can see from the numbers above, we did not win them all. Many of the applications submitted were denied.⁷⁶ When an applicant was denied, the DOC provided the Clinic and the student who worked on the case with a copy of the decision. Frustratingly, the DOC denial letter was terse and lacked analysis or reasoning. The form merely identified that an individual was denied because they did not have a medical condition that met the CMR eligibility criteria, or they posed a risk of harm to the community. The form never explained to the client or the student why the applicant did not meet the CMR criteria. Moreover, the CMR process did not provide a denied individual any right of appeal.

Some of the DOC denials were reasonable and within the criteria set forth by the agency. For example, a person with a recent murder conviction and medical conditions that did not seem severe was unlikely to secure release. However, many denials did not seem fair. Those denied relief included pregnant mothers, those with autoimmune diseases, and those with three months remaining on a non-violent sentence.

While we celebrated the victories, the students and clinicians alike struggled mightily with the denials and students battled with the sense of injustice in the administration of the CMR program. Students believed their clients were eligible for release and many denials came as a shock. These feelings were amplified by the high stakes of the work we performed. Clinicians and students knew that if the DOC denied a person's application, there was a chance they would die in prison. Those with three-year sentences were facing a possible COVID-19 death sentence in prison. The risks to our clients were not lost on the students.

After CMR ended, COVID-19 rampaged Minnesota's correctional facilities. Some facilities saw infection rates over 80%. To date, 4,229 incarcerated individuals have tested positive for COVID-19 leading to 12 deaths.⁷⁷ Some of those who died were denied CMR. Despite these frustrations, the student response to the CMR Project was very positive. We routinely heard from students that they enjoyed

⁷⁶ Of the CMR applications submitted in the spring and summer of 2020, the DOC denied 2,046 CMR applications and approved only 155. *COVID-19 Updates*, Minn. Dep't of Corrections, <https://mn.gov/doc/about/covid-19-updates/> (last visited Sept. 10, 2021).

⁷⁷ *Id.*

being able to do something positive during the pandemic. Students commented on how much they liked their clients, how strongly they felt about the issues, and how they appreciated the immense amount of client contact. The students were the heart of the CMR Project, and they performed wonderfully. Yet the students and clinicians still question: was the CMR Project a success?

CONCLUSION

On the whole, the COVID-19 Legal Response Clinic was a positive experience for students and professors alike. As professors, we gained significant knowledge in how to better incorporate blended students into existing clinics. Providing services to clients and the community also gave us all a sense of purpose during a particularly difficult summer in the Twin Cities. And most importantly, by teaching the COVID-19 Legal Response Clinic and reflecting on the events of last year by writing this article, we gained an appreciation for caring for our own mental health and trauma-informed lawyering, which we continue to incorporate into our respective clinics.