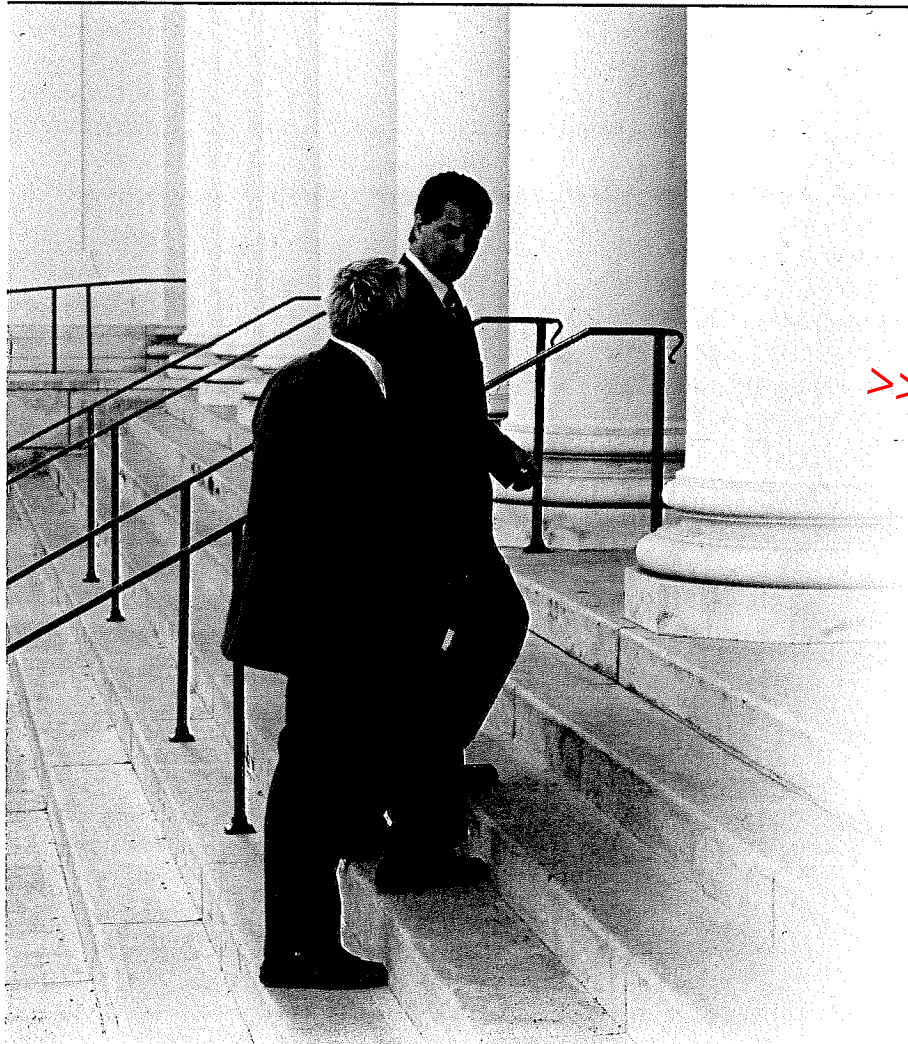


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**Journal of
Poverty Law
and Policy**

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mats, bars, coffee shops, the public library, the free community clinic, grocery stores, the benefits office, and the unemployment office.

Zach and I were fortunate to be in a small media market with ample opportunities for interviews. We took advantage of every media opportunity, big or small. We were interviewed for a front-page story in the *Joplin Globe*, our local daily newspaper (Andra Bryan Stefanoni, *Tornado Team Providing Free Legal Advice to Tornado Victims*, JOPLIN GLOBE (Dec. 4, 2011) <http://bit.ly/10RSHZh>). Local network affiliates interviewed us on-camera and aired the interviews on morning shows and the evening news (Jennifer Penate, *Attorneys Help Residents at No Cost*, FOUR STATES HOMEPAGE.COM (Dec. 7, 2011), <http://bit.ly/14NeV1C>; Philip Mitchell, *Reaching Out with Philip Mitchell*, FOUR STATES HOMEPAGE.COM (May 10, 2012), <http://bit.ly/14tlcA3>). *Missouri Lawyers Weekly* wrote an in-depth profile about our work, and I spoke with an Associated Press reporter for a story about the increase in domestic violence following the storm (Melissa Meinzer, *A Year Later, World Still Spinning for Poorest Victims of Joplin Tornado*, MISSOURI LAWYERS WEEKLY (May 21, 2012), <http://bit.ly/118YVCH>; Associated Press, *Abuse Victims in Joplin Struggle to Find Housing*, FoxNews.com (Dec. 21, 2011), <http://fxn.ws/18fiYpE>). Much of this was made possible through our partnership with Equal Justice Works, which sent out press releases on our behalf and covered our work on its blog (*AmeriCorps Update: Joplin, Missouri, Continues to Rebuild with the Help of Equal Justice Works AmeriCorps Legal Fellows*, EQUAL JUSTICE WORKS (May 2013), <http://bit.ly/ZaXUQq>).

Paying It Forward

Attorneys responding to a disaster generally have no prior experience with "disaster law" because no one plans for this. No one plans for a disaster to strike one's communities or clients. I have found the most useful resource to be attorneys who have lived through disasters. The legal services community is incredibly generous and helpful, and there is a real spirit of paying it forward. I reached out to legal services attorneys who responded to Hurricane Katrina, and I received invaluable advice. I, in turn, have given advice to attorneys responding to flooding in North Dakota and hurricanes on the East Coast. Thanks to Equal Justice Works, I also had the privilege of spending two weeks at MFY Legal Services in New York City assisting clients affected by Hurricane Sandy (Miranda Selover, *AmeriCorps Week: AmeriCorps Fellows Jamie Rodriguez and Zachary Tusinger Help Disaster Victims*, EQUAL JUSTICE WORKS (March 10, 2013), <http://bit.ly/118HI2k>). And, after the recent devastating tornadoes in Oklahoma, Legal Aid of Western Missouri immediately reached out to Legal Aid Services of Oklahoma to offer our advice and support.

Zach and I plan to make several trips to Oklahoma in the coming months to lend a hand. I spoke with Legal Aid Services of Oklahoma's executive director on the phone just three days after the tornado, and he told me he had already been contacted by attorneys from around the country, including Joplin and New York. He commented that, besides giving practical tips, these calls made him feel like he was not alone. I have learned that every disaster is different in the details, but your personal connections will always be your most valuable resource. Reach out to and develop relationships with community partners

meeting nonlegal disaster needs, local FEMA staff, and attorneys with previous disaster-law experience.

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Justice for Hmong American Farmers in Minnesota

Hmong refugees began coming to the United States in 1976, after more than a decade of assisting U.S. troops in the Secret War, which was in part a theater of the larger Vietnam War. An estimated 30,000 to 40,000 Hmong died in that war. The 2010 Census estimated that 260,076 Hmong Americans now live in the United States (U.S. Census Bureau, Race Reporting for the Asian Population by Selected Categories: 2010 (n.d.), <http://1.usa.gov/17TbPHP>).

Nearly 67,000 Hmong Americans live in Minnesota, which is home to the second largest population of Hmong Americans (after California) (Mark E. Pfeifer et al., *Hmong Population and Demographic Trends in the 2010 Census and 2010 American Community Survey*, 13(2) HMONG STUDIES JOURNAL 1, 4 (2012), <http://bit.ly/17TbHhI>). The twin cities of Minneapolis and St. Paul are home to the largest urban population of Hmong Americans (*id.* at 8).

Growing food has always been important to Hmong people, and many retained their agricultural traditions upon arriving in the United States, with farming becoming a primary occupation of many. Some grew vegetables for their families' consumption; others sold their produce commercially, most often at farmers' markets. A substantial number in our region began selling produce commercially after losing their jobs in the recession of 2008–2009. Most live and sell in the urban areas and rent farmland within a reasonable driving distance in the surrounding periurban areas.

Hmong American Farmers in May Township

May Township, founded in 1893, is a rural town in Washington County, Minnesota, about forty-five minutes from St. Paul. The township was named after Morgan May, an English immigrant farmer. The land use is a mixture of residences, agriculture, and open space.

Washington County's population is 88.5 percent white, 5.1 percent Asian, and 3.8 percent African American. The median household income in Washington County from 2007 to 2011 was \$79,571, compared to a statewide median of \$58,476 for the same period (U.S. Census Bureau, Washington County, Minnesota (June 27, 2013), <http://1.usa.gov/ZXOOVu>).

In 2010 May Township developed a comprehensive plan to guide its path for the next twenty years. That plan lists the

"general community goals most representative of the values that are important to residents of the Town of May as a whole" (TOWN OF MAY 2030 COMPREHENSIVE PLAN 8 (n.d.), <http://bit.ly/10qLrbW>):

Protect the Township's natural environment. Retain the rural character of the Township. Preserve and promote agricultural endeavors. Operate the Town in a fiscally responsible manner, keeping taxes low while providing services at a rural level. By following the goals above, preserve the quality of life in the Township. [(*id.*)].

In 2011 a St. Paul Hmong American resident, who lost his job in the recession of 2008–2009, rented about 30 May Township acres of land that he farmed collectively with about eight other families. They had a good growing season in 2011, and members of his church community asked about his produce and expressed an interest in renting land at the same spot. He approached the landlord, who agreed to rent 110 acres of farmland to him and a group of forty or so Hmong American farm families for the 2012 growing season.

Targeted Zoning

The township board of supervisors had had problems with the farmland's owner—problems unrelated to the Hmong farmers renting his land. In 2011 the board minutes reflect discussions about "gardeners" at the landowner's land but no actions were taken.

In March 2012 the board enacted Ordinance 2012-03, which regulated "agricultural garden plots," defined as "[t]he providing of tracts of land or sub-plots for people who reside off-premise to utilize the land for gardening, such as the growing of produce, herbs, flowers and decorative vegetation, or other similar non-livestock related activities" (TOWN OF MAY, MINN., ORDINANCE 2012-03 § 2(1) (2012), <http://bit.ly/11tfNWE>). Notably the definition did not regulate garden plots for residents who lived in the township; the ordinance applied only to those who came to May Township to rent land for vegetable production. Nor did the ordinance apply to "traditional large acreage mechanized agriculture, such as the growing and harvesting of small grains, row crops, hay, forage and the like" (*id.*).

The ordinance imposed severe restrictions on the growing of vegetables. Among other provisions, it (1) required an interim use permit (for which the application fee was approximately \$1,200); (2) prohibited more than 15 percent of a piece of property or forty acres, whichever was less, from being used as "garden plots"; (3) required garden plots of more than five acres to give the town a site plan before beginning any activity; (4) restricted hours that a person could be on the plot to no earlier than 7:00 a.m. and no later than one-half hour after sunset; (5) required one portable toilet for every twenty acres of land being "gardenized"; (6) restricted the number and type of vehicles that could be on the land and where they could park; and (7) required that all structures erected on site comply with all building codes but be removed by October 31 (*id.* § 2(5)).

The Hmong American farmers were given no notice and were unaware of the ordinance. At the board's April 2012 meeting, the township attorney reported that a notice had gone out telling the landowner that he needed to seek a permit in order

to have vegetable production on his land. Several individuals contacted our office about the ordinance after a local newspaper article reported on its passage (see Phillip Bock, *Township Passes Garden Plot Ordinance*, COUNTRY MESSENGER, March 13, 2012, <http://bit.ly/11KCjdx>). We looked into the background of the ordinance, the context and procedure in which it arose, and who would be affected by it.

At its May 2012 meeting, the board voted to accept its attorney's recommendation to proceed to litigation against the landowner on the basis of the nuisance caused by the cars and to enforce the "garden plot" code provision. When a Hmong American farmer from St. Paul read in the local newspaper about the board's May 2012 motion to authorize litigation, he contacted Farmers' Legal Action Group staff attorney and Hmong community outreach coordinator Hli Xyooj. He had Xyooj's business card from her outreach at the farmers' market where he sold his produce.

At our client's request, Xyooj and I met with the Hmong American farmers at their field to review the ordinance with them, explain its provisions, and discuss their options, including what efforts they could make to comply with the ordinance.

The farmers elected a spokesperson for the group and retained Farmers' Legal Action Group to represent them to ensure they would be able to continue farming during that season. We researched legal challenges relating to the township's comprehensive plan, upzoning, police powers, constitutional issues, and the requirements of an interim use permit. We interviewed witnesses in the area.

Knowing a legal battle in court could consume more resources than we had, we raised funds by approaching friends and funders in that area. We set about trying to find private counsel who could either litigate or cocounsel with us pro bono.

We learned that the township board was meeting again on June 7, 2012. Although we did not have our research completed, the farmers wanted us to attend the meeting, and we wanted to learn where the township stood on initiating litigation, and so we met a group of the Hmong American farmers at the town hall. We had not intended to make any presentation and were hoping simply to observe the meeting. The town hall being a small one-room building, we could not easily slip in unnoticed.

After the meeting was called to order, the board chairman invited us to introduce ourselves. The farmers' representative introduced himself and started by telling his story of coming to the United States, how he came to start farming and renting the land in May Township, and how much he loved the land there because it was such a good, rich soil and had allowed him to sell his produce at local markets and earn a living after he lost his job. Xyooj and I introduced ourselves and put on the record our objections to the ordinance.

The dialogue that followed was lively and somewhat heated but yielded a good exchange of information. We learned that the attorney for the township had begun drafting a complaint, and the board learned more about the farmers renting the land. The board chairman stated that the ordinance had been enacted in response to neighbors' complaints. At the end of the meeting, the board chairman commented that hearing from the farmers had been helpful and that board members

had no prior information about what was going on at that farm site. The attendees did not agree on a course of action at that meeting, but the board encouraged our clients to apply for an interim use permit on their own or get the landowner to apply for one. We noted that, as renters, our clients would not have standing to apply for the permit, that requiring a permit was financially burdensome, and that no rational basis justified requiring a permit to make a living raising vegetables, particularly when corn and soybean growers faced no such requirement.

Uncertainty and Discovery

A series of conversations with the township's attorney followed, as he tried to determine if he should proceed with filing a complaint against the landowner and, if so, whether it would include the claim for violation of the "gardening" ordinance.

In the meantime we were able to find pro bono counsel who agreed to act as cocounsel if the case proceeded to litigation. We could not have secured a better pro bono attorney. David Lillehaug, a well-known attorney in Minnesota, was a partner at the law firm of Fredrikson and Byron. He has had an illustrious career: among other high-profile work, he was the former U.S. attorney for Minnesota, represented Al Franken in the U.S. Senate race recount, and was recently appointed to the Minnesota Supreme Court. Lillehaug's schedule surprisingly allowed him to work on the case, and he readily agreed to work with us. He immediately sent out a Minnesota Data Practices Act request for all documents relating to alleged complaints that the board of supervisors had received about the Hmong American farmers, as well as any documents relating to the ordinance in any way, including any documents reflecting the intent or motive behind the ordinance.

Meanwhile the Hmong American farmers were going about their business of raising vegetables—but very apprehensively, worried that the township might seek to enjoin them from planting or harvesting in midseason.

Media Coverage

Unbeknownst to us, the local newspaper regularly has a reporter at the township board of supervisors meetings, and a reporter attended the June 7 meeting. An article about the Hmong American farmers' plight ran on June 12, and it immediately caught the attention of other larger media outlets (see Phillip Bock, *Farmers Shed Light on Garden Plot Operation*, COUNTRY MESSENGER, June 12, 2012, <http://bit.ly/11jGvo5>). Over the next month or two, both major newspapers—the St. Paul Pioneer Press and the Minneapolis Star Tribune—ran lengthy, front-page articles (see Andy Greder, *Growing Pains: Hmong Farmers, May Township at Odds over Farming Regulations*, PIONEER PRESS, Aug. 19, 2012, <http://bit.ly/14Gd6Fj>; Kaitlyn Walsh, *Dust-up over Hmong Gardens*, STAR TRIBUNE, July 31, 2012, <http://bit.ly/16bF6Qa>). Minnesota Public Radio covered the story in August and September (see Rupa Shenoy, *Township Drops Ordinance Opposed by Hmong Farmers*, MINNESOTA PUBLIC RADIO, Sept. 6, 2012, <http://bit.ly/13UTpXD>; Laura Yuen, *Hmong Farmers Prompt May Township to Revisit Growing Rules*, MINNESOTA PUBLIC RADIO, Aug. 20, 2012, <http://bit.ly/ZY0IEm>).

The Outcome

After several conversations, the township agreed to take up the ordinance at its board of supervisors meeting on September 6, 2012. We submitted a written position statement in advance, and at the meeting we spoke in favor of repealing the ordinance. The board chairman noted that the ordinance had been enacted before the parties most affected were consulted; this being against the township's regular practice, he moved to repeal the ordinance. The township attorney recommended repeal, and the vote to repeal was unanimous. In concluding the vote, the board chairman stated that he hoped to have an ongoing relationship and dialogue with the Hmong American farmers at that land and told the group of farmers, "I'm glad you're here."

Virtually all of the Hmong American farmers renting that 110-acre plot of land were low-income. The farmers' representative said that this was the best quality land he had farmed, and he was thrilled to be able to earn around \$14,000 gross from selling his produce—a big increase for him after being laid off in the economic recession. A rough estimate of the amount of collective income that was preserved by the repeal of the ordinance in 2012 was \$300,000. We have since negotiated a new lease with the landowner for the 2013 season, and the farmers' 2013 season is secure and well under way.

Lessons Learned

To create enduring solutions to conflicts, we need to look beyond legal tools and solutions. While critical, a legal victory by itself does not achieve the result that our clients need and want: peaceful and mutually supportive relationships within the community.

Be Present in the Community. Of critical importance were the trusting relationships we had built within the Hmong American community. Xyooj had been doing outreach and building relationships with Hmong community organizations and Hmong American farmers for six years when the May Township farmer called her. She had met him at a farmers' market vendors' meeting. She regularly attends such meetings and other community events whether or not the community has an immediate need for legal services. If she had not reached out and connected, he and the other farmers likely would not have been able to find counsel.

We attend the annual meetings at most of the larger farmers' markets and work with vendors and management to resolve misunderstandings and disputes that result from language barriers, a lack of understanding of the rules and requirements, bias, or some combination of the three. Some of these disputes can be avoided if resolved early enough. As a result of litigation we initiated on one vendor's behalf, one major market, whose membership is more than half Hmong American, translated its rules into Hmong and now has interpreters at annual vendor meetings. Other local markets voluntarily have interpreters.

The importance of having established relationships was dramatically demonstrated three years ago, when a Hmong American couple who farmed one of the rare pieces of suburban farmland with forty-three other farmers was threatened by an intoxicated neighbor with a loaded shotgun. Because the farmers spoke no English, they called the executive director

of the Association for the Advancement of Hmong Women in Minnesota. She called 911, and then she called Farmers' Legal Action Group. We were able to respond immediately to work with prosecutors to ensure that the defendant was charged with a felony and that the conditions of his release would include a no-contact order for the couple and surrender of his firearms. The Association for the Advancement of Hmong Women in Minnesota convened all forty-five farmers at a Saturday meeting at its office where we could go over safety protocols and obtain affidavits from each of them. We filed those affidavits with our successful motion for a civil protective order for all forty-five farmers. With the Hmong women's association, we met with local police officers to bring them to the farm and arrange regular patrols there and worked with the 911 dispatcher's office to agree upon the two English words the farmers would need to say so that dispatchers would know to send the police to that farm. Our organizations, in partnership, were able to fulfill the farmers' needs holistically.

Cultural Competence Is Vital. Our ability to build trusting relationships with our clients is due in part to the cultural competence in which we have invested over the past several years. Because Minnesota is home to such a large population of Hmong American farmers, Farmers' Legal Action Group has benefited from having a native Hmong-speaking attorney on staff. Many legal words and concepts have no direct translation in the Hmong language because many of the concepts are foreign to the Hmong culture. For instance, we learned fairly early on that we cannot assume that clients understand how our legal system works—how a lawsuit is initiated, the discovery process, the need to prove a case with evidence, or the concept of a neutral decision maker. One client thought that we should have been able to win his case because our organization was more powerful (i.e., had more clout in the community) than the defendant's. We partner with community organizations (such as the Association for the Advancement of Hmong Women in Minnesota) that help bring cultural competence to our work.

Peaceful, Community-Based Solutions Are More Important to Our Clients than Litigation Wins. Our most successful and enduring results have come through alternative dispute resolution, with a heavy emphasis on the "alternative," through using the legal process but at the same time pursuing—and being open to—more community-based solutions.

For example, in the case involving the neighbor with a loaded shotgun, we set up a mediation process with two Hmong American mediators who were able to help bridge not only the communication gap but also the cultural gap. As a result of that mediation and at the request of both our clients and the defendant, we organized with a Hmong spiritual leader and a Catholic priest a spiritual healing ceremony, where what was important to all of the participants, including the defendant, was that the defendant begin to make amends and be accountable to both his spiritual community and the Hmong farmers' spiritual community.

Our clients requested this ceremony because they wanted peaceful, respectful coexistence, which meant forgiveness and

healing with justice. They also wanted legal accountability and protection. After the ceremony, the defendant and his counsel stipulated to a two-year civil protective order for all forty-five farmers; the order allowed some limited contact but still protected the farmers.

Similarly, in May Township, the goal was to create a more welcoming environment so that the farmers could live peacefully with their neighbors and continue to farm at this piece of farmland. While presenting a strong legal case was requisite, engaging in a productive dialogue was absolutely necessary. Dialogue would have been difficult if we had pursued only litigation.

Use Media Strategically. In the May Township case, we did not initiate the media coverage, but we did cooperate with reporters to help shape the stories to make sure our clients appeared both sympathetic and right—which was not difficult. Given our goal of reaching a broader community to eliminate biases and build bridges, we have strategically written and placed stories in local papers and letters to the editor (see, e.g., Ly Vang & Susan E. Stokes, *Support Your Local Hmong Farmer*, *STARTRIBUNE*, June 29, 2010, <http://bit.ly/1aorqDR>).

Clients Usually Are Their Own Best Advocates. Once the stage is set, so to speak—with the legal positions clarified and an avenue established for some dialogue—often the best thing that lawyers can do is to get out of the way and let the clients speak for themselves and tell their stories. Our client in May Township has an infectious smile and an open and engaging personality that makes people like him and want to see him succeed. Advocates should remember that other cultures have strong storytelling traditions, and clients from those cultures are very skilled in telling their stories. Often sharing stories is what tears down walls and barriers and biases. Once the farmers in the case with the neighbor's threats shared their stories of harrowing escapes from Laos, living in the jungles, crossing the Mekong River, living and starting families in refugee camps in Thailand, and starting new lives in a new (and very cold) country, their neighbors could no longer think of them as a group or an abstraction; they were individuals who had endured more than most of us could imagine. Humanization leads to greater understanding and a more welcoming environment.

Author's Acknowledgments

I would like to acknowledge the Hmong American farmers, whose generosity never ceases to amaze and inspire me. I would also like to recognize my colleague Hli Xyooj, whose legal, diplomatic, and language skills are changing the world.

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