

Maine State Bar Association

MAINE BAR JOURNAL

Volume 36 | Number 4 | 2021





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MAINE BAR JOURNAL

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Citation note: According to Uniform Maine Citations (2010 ed.), [a]rticles in the Maine Bar Journal should be cited as follows: Paul McDonald & Daniel J. Murphy, Recovery of Lost Profits Damages: All is not Lost, 24 Me. Bar J. 152 (2009)."

DISCLAIMER: Views and opinions expressed in articles are the authors' own.

124 STATE STREET, AUGUSTA ME 04330
VOLUME 36 | NUMBER 4 | 2021
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Maine Bar Journal (ISSN 0885-9973) is published four times yearly by the Maine State Bar Association, 124 State Street, Augusta ME 04330. Subscription price is \$18 per year to MSBA members as part of MSBA dues, \$60 per year to nonmembers. Send checks and/or subscription address changes to: Subscriptions, MSBA, 124 State Street, Augusta ME 04330. *Maine Bar Journal* is indexed by both the Index to Legal Periodicals and the Current Law Index/ Legal Resources Index-Selected. Maine Bar Journal articles are also available to MSBA members at www.mainebar.org and to subscribers of the Casemaker and Westlaw online legal research services. Views and opinions expressed in articles are the authors' own. Authors are solely responsible for the accuracy of all citations and quotations. No portion of the *Maine Bar Journal* may be reproduced without the express written consent of the editor. Postmaster: send Form 3579 for address corrections. Periodicals postage paid at Augusta ME 04330. All rights reserved. Copyright © 2021 Maine State Bar Association www.mainebar.org



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Finishing Strong in Challenging Times

Here we are: another year almost in the books. 2021 has been another challenging year for all of us as we have struggled with the pandemic and its effects on the economy, our personal lives, and our profession.

Despite those challenges, the MSBA has come through the year with flying colors. Our staff has worked relentlessly to continue bringing you programs and membership benefits in new ways. You, our members, have continued to renew your memberships and support our mission. We have made significant progress toward our goals for the year.

In my inaugural column last winter, I described our three goals: a rural practice initiative; a focus on increasing diversity, inclusivity, and equal opportunity in our profession; and enhancing the relevance of membership for our members. We have made great strides in all three areas, with more to come.

Our first goal is to enact a rural practice initiative. The Board of Governors formed a working group to identify and enact steps to address the aging out and general shortage of lawyers in our more rural areas. Many of the root causes of this issue are systemic societal issues, but we do think we can make a difference. For example, we worked together with the Law School to organize a job fair in Skowhegan in September to bring together employers and law students. Unfortunately, we had to cancel the event due to concerns about Covid,

but this pilot project has significant promise for the future. We are developing resources to help rural lawyers recruit associates and other lawyers to take on their practices. We are working with the Judicial Branch to explore new ways to bring representation across the state, including through remote proceedings.

Our second goal is to proactively take steps to increase minority representation at all levels of the legal system, including our Association. Our newly formed Diversity Committee has now completed its first year of work. Based on its recommendations, the Board of Governors approved a new BIPOC (Black, Indigenous, and People of Color) Lawyers Section. That Section has been very active since its inception.

The Association conducted a survey of lawyers to collect information about the experiences of lawyers from historically underrepresented communities and an article sharing some of those results can be found elsewhere in this edition. We have conducted DEI (diversity, equity, and inclusion) trainings for the Board of Governors and staff, and we made those same trainings available to our members. We are creating an annual diversity report that the Association will issue to track the diversity of the Association's membership, leadership, and presenters. To be clear: these efforts represent merely a beginning of what must be a continuous effort. Being aware of and addressing diversity issues must be an ongoing effort.

Our third goal is to continue to enhance the relevance of the Association for you, our members. We have the highest participation rate of all voluntary bar associations in the nation. We had very successful Winter and Summer Bar Conferences over the past year, a testament to your willingness to endure even more Zoom meetings. We rolled out MEBarConnect, our online community and discussion group software. We were active at the Legislature, lobbying on behalf of the Association's interests. We are making our voices heard with the Judicial Branch on issues of concerns to all of us, including the delay in the resumption of civil jury trials and the roll out of eFiling. We are guided by your feedback, so if there is an issue of particular concern to you, please make sure we know about it!

Serving as President of this Association has been a great honor. I do wish that we had had the opportunity to meet in person across the state but hope to make up for that in future years. I can report to you that the Board of Governors is in great shape. We have an enthusiastic, engaged Board with a strong lineup of leaders coming your way. I am delighted to turn over the reins of the presidency to Frank Bishop and know that the Association will continue to do great things in the coming years!

Kelly McDonald





ANGELA P. ARMSTRONG is the Maine State Bar Association's executive director. She can be reached at aarmstrong@mainebar.org.



How MSBA Membership Supports Efficient Lawyering

Fall has arrived quickly in Maine this year. The leaves are changing, the mornings are crisp, the evenings are cool, the hours of sunlight are getting shorter, and many of us are already looking ahead to the upcoming holidays. With the pandemic still an ongoing issue, we are being warned to start our holiday shopping and travel planning early. But, we still have clients to meet with, work to accomplish, kids' school and sporting events to attend, along with everything else on our to-do list.

The big question: how do I get it all done while maintaining my sanity and well-being? Unfortunately, the MSBA can't get your holiday shopping done or book your travel...but we can help you be more efficient in your work as a Maine attorney, so you'll have more time to spend on the other parts of your busy life.

Because we know that not all our members have the same needs or belong for the same reason, we strive to bring value to you in different ways. Our efforts are primarily focused on opportunities to learn, save, and connect. And to do so as easily and efficiently as possible!

Learn.

While all attorneys in Maine need to fulfill mandatory CLE requirements, not everyone has the same interests or easy access to CLE programming. For that reason, we work hard to offer a wide range of easy-to-access CLE programs and user-friendly recordkeeping, such as:

- CLEs via Zoom, webinar, audio webcast to save you travel time.
- CLEtoGo for learning on your own schedule.
- Practice management-focused CLE programs, such as our recent four-part series by Barron Henley about mastering Microsoft Word.
- Online registration for CLE programs and easy access to certificates of attendance for MSBA CLE posted directly to your account.

While CLE is important, the MSBA also offers other ways to learn and stay current on trends and issues affecting your practice and Maine's legal community. Your membership also provides access to information that helps you stay informed about the latest news, issues, and activities of your bar association:

- *Maine Bar Journal*
- Legislative Updates
- The Supplement
- Weekly CLE Email Blasts
- Board of Governors Meeting Minutes
- Legislative Testimony
- Monthly Bar Talk Zoom Updates

Save.

Our member benefits are designed to support a wide range of members, including our solo practitioners and small firms. Although we offer an array of benefits, including personal

MEMBER

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and professional insurance and discounted shipping, wireless services, and travel, here are some specific benefits that can help you practice more efficiently – saving time and money:

- Fastcase online legal research library. Valued at \$1000, your membership more than pays for this service. Learn more at www.mainebar.org/fastcase.
- Clio cloud-based legal practice management software allows you to manage time and improve productivity. Members receive a 10 percent lifetime discount.
- Paychex payroll and taxpay services, including timekeeping services to support HR.
- LawPay lets you accept credit card, debit card, and eCheck payments from clients online in accordance with ABA and IOLTA guidelines.
- Smith.ai virtual receptionists answer calls and chats; screen and intake clients; schedule appointments; and take payments. Integrates with Clio and LawPay.

Connect.

The MSBA website and Bar Headquarters are your go-to places for information about your membership, member benefits, CLE and MSBA event registrations, and practice management resources.

- Manage your membership, contact information, CLE/event registrations and certificates of attendance on the MSBA website.
- Connect with colleagues through membership in

MSBA sections and MEBARConnect.

- Participate in live monthly Bar Talks, or access the Bar Talk archives and find pandemic-related information at your fingertips.
- Touch base with your District Governor and other MSBA Governors and Officers.
- Reach MSBA staff at Bar Headquarters by email or phone.
- Use the member directory to find and connect with colleagues.

We know your time is valuable. Your membership is valuable to us. I hope that you are taking advantage of the many ways that the MSBA can help save you time and money in your legal practice. If you're not, I encourage you to look into these resources further. Or sign into your account and visit www.mainebar.org/discounts to see the full list of your member benefits. You just may find a new resource to make your law practice – and your life – more efficient.

As always, please contact me by phone at (207) 622-7523 or by email (aarmstrong@mainebar.org) with any ideas or concerns about the Maine State Bar Association. Thank you!





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ADR in Maine: A Legacy of Female Leadership

Ombudsman programs, mediation, arbitration, neutral evaluation. Alternative dispute resolution, widely known as “ADR,” can take many forms. And most ADR practitioners wear multiple hats, practicing more than one form of dispute resolution. At its core, ADR refers to a dispute resolution process that is alternative to litigation. ADR has become increasingly mainstream as a way to resolve disputes by agreement or through a chosen third-party neutral. As a woman practitioner with a full-time “neutral” practice developed over 16 years in the field, I have long been impressed and influenced by my female peers.

In this article, I set out to understand the ways in which women have shaped the advancement of ADR practice here in Maine, and what it is about the field that so many of us find fascinating and enriching. I hope the article will reflect on some of the remarkable women who have been instrumental in making Maine’s ADR field so robust and also highlight the generous contributions they have made to developing other female practitioners. While I have had to select a handful of visionary women to highlight, and although many men have played critical roles in the movement as well, the focus of this article will be on the particular impact made by several pioneering women on the field.

Maine as an ADR Leader

A history of ADR takes us back to 1800 B.C., when the Mari Kingdom in modern Syria used mediation and arbitration to resolve disputes with other kingdoms.¹ Fast forward three centuries to the 1770s, in the United States, when George Washington inserted an arbitration clause in his will, requiring that all disputes be finally determined by a three-member arbitration panel.² Then skip forward just 200 years to 1993, when, in Maine, the Commission to Study the Future of Maine’s Court issued a report to the Legislature’s Judiciary Committee entitled “New Dimensions to Justice,”

recommending the development and implementation of a comprehensive system embracing a variety of dispute resolution alternatives within the court system.³

The Commission’s recommendations catapulted Maine to the forefront of efforts across the United States to implement ADR programs within court systems. The Commission’s work built on Maine’s early entry into ADR, requiring mediation at family matters since 1978 and creating the Court Alternative Dispute Resolution Service (CADRES) in 1986, establishing mediation programs in court cases involving small claims, landlord-tenant, and family matters.

Women at the Forefront

When it comes to the advancement of ADR practice in Maine, nationally, and even abroad, much credit must be given to the skills and dedication of several Maine women who are experts in the field and have been at the forefront of our state’s progress over the past three decades. The Commission to Study the Future of Maine’s Courts, for starters, was chaired by Judge Harriet P. Henry, directed by Kathryn Monahan Ainsworth, Esq. Ann Gosline, Esq., provided consultation to the ADR Task Force of the Commission.

Parallel to the court’s expansion of ADR, on the practitioner side of the equation, women have also been key contributors. The Maine Association of Dispute Resolution Professionals (MADRAP) formed in 1989 when a small group of professional neutrals began meeting regularly to share their experiences in the field of dispute resolution and to enhance their skills. In 1997, Shari Broder was elected as the first female president. Today, the organization is known as the Maine Association of Mediators, and continues to have a woman at the helm, President Pam Waite.

I spoke with several of these leaders to get their perspectives

The Commission's work built on Maine's early entry into ADR, requiring mediation at family matters since 1978 and creating the Court Alternative Resolution Dispute Service (CADRES) in 1986, establishing mediation programs in court cases involving small claims, landlord-tenant, and family matters.

on how women have shaped the practice of ADR in Maine. In those conversations, the theme of mentoring came to the forefront. Clearly, mentors have played a key role in the development of many ADR professionals. Mentoring opportunities are particularly important in this arena because there is no clearly marked path to becoming an ADR professional. In Maine, a full-time ADR professional often wears multiple hats, such as hearing officer, mediator, arbitrator, and facilitator. And with the advancement of female practitioners, many have taken on the role of mentor with special attention.

Ann Gosline

After a few years as a labor law attorney in the mid-1980s, Ann Gosline, the consultant to the ADR Task Force of the Commission, began to practice full-time ADR, subsequently becoming considered by many a Maine treasure on the national stage. As with many ADR professionals, Gosline's work has included a range of roles, including labor arbitrator, mediator, and public policy discussion facilitator. She gained particular expertise in designing and facilitating multi-party processes to address public policy issues such as transportation planning, wind tower siting regulatory processes, state and federal wetlands regulation, watershed restoration, environmental risk assessment, environmental priority setting, and health system reform. In 2010, Gosline shifted the focus of her public policy facilitation primarily to issues of climate change, biodiversity, and sustainable development.

When Gosline transitioned from advocate to ADR professional, her mentor was a well-established Massachusetts labor arbitrator and mediator, who introduced her as his apprentice at arbitrations. She was fortunate in that her mentor, a male attorney, "was interested in seeing more women enter the field." Gosline is thankful that she transitioned into ADR at a time when the types of roles one could undertake

in the field were expanding exponentially and that she had the support of many women who moved into the field beside her. She credits the excellent teaching of Pam Plumb and Dee Kelsey, authors of the book *Great Meetings!: Great Results*, which she utilized regularly in her facilitation practice.

Gosline connects the overall growth of ADR in Maine with the advancements women have made in the field. Noting that Maine has been a leader in recognizing the value of non-litigation options to resolve disputes both inside and outside the courtroom, Gosline credits the Maine court system "with recognizing a broad skill set as beneficial to successful ADR practice, which resulted in the court system expanding the role to include non-attorneys." She believes that the inclusion of non-attorney mediators on court rosters allowed more women to be involved in the practice within the court system rosters from their inception.

As to the current allure of ADR to women attorneys, Gosline notes that ADR offers attorneys who enjoy the problem-solving aspect of the law with the opportunity to provide their clients with non-litigation options to resolve disputes. Gosline herself made the transition from advocate to ADR practitioner because she did not find adjudication to be a satisfactory means to resolve many of the workplace conflicts she was handling. Gosline recalls a female student in an ADR survey course she taught with Kathryn Monahan Ainsworth and Jonathan Reitman at the University of Maine School of Law approaching her to express that taking the course felt like "coming in from the cold," because the student felt so much more at home discussing dispute resolution through ADR processes. She notes that women who are drawn to relationship building succeed as ADR practitioners by helping individuals repair conflict-impacted relationships. Gosline found that the role of neutral fit her more comfortably than the role of advocate; as an intermediary, she has enjoyed

helping people engage in difficult conversations about challenging situations, and like her student, feels that the transition to a neutral dispute resolution practice allowed her to come in from the cold.

Kathryn Monahan Ainsworth

Kathryn Monahan Ainsworth, who directed the Commission to Study the Future of Maine's Courts, has traveled the world applying her experience in ADR. After several years in partnership with Gosline and beloved mediator Reitman, who passed away in 2014, Monahan Ainsworth has spent the last 10 years in various locations around the world, including Jordan, Egypt, the Philippines, China, and Tunisia, helping develop Rule of Law Initiatives and applying her ADR training. Monahan Ainsworth explains, "Some of that work included mediation training for lawyers and neutrals and also assisting with the establishment of court mediation, private ADR and non-profit NGOs providing ADR." She found that "working across cultures and professional backgrounds, the ethics and values that I embraced as an ADR professional has stood me in good stead."

Monahan Ainsworth recalls that her first experience with ADR came as a participant in family matters in the court system, where she was impressed by the strong problem-solving approach and the ability to focus on common interests, particularly when it came to children. She began training as a mediator shortly afterwards. In her work with the Commission, she found that "[a]lthough there was resistance from some practitioners, my perspective on the impact includes the legitimization of ADR as an approach and education of legal professionals in how to use those tools to enhance their practices." She believes the Commission's efforts to learn how various courts in the United States and around the world were incorporating ADR into judicial systems expanded their horizons to include the "possible." Monahan Ainsworth credits Gosline and Reitman with mentoring her and helping her expand her ADR skills and perspectives, fostered even more when all three taught ADR together at the University of Maine School of Law for several years.

In addition to the critical role that other woman played in mentoring her, Monahan Ainsworth observes that women took on major leadership roles in advancing ADR in Maine through offering trainings, helping advance professional associations and activities such as "ADR Week," and participating in court committees overseeing the ADR process within the court system.

Diane Kenty

Diane Kenty, the face of the Maine court system's CADRES program, is another highly-regarded ADR practitioner in Maine who also teaches ADR at Maine Law. She has led the CADRES program since its inception, following its evolution from the Court Mediation Service. Kenty got her start in ADR as a lawyer in private practice in Boston, supported by two male mentors who helped her obtain mediation training and create an ADR team within the firm.

Kenty notes the significant impact of the adoption of Maine Superior Court Rule 16B in 2001, requiring parties in many Superior Court civil matters to engage in ADR prior to advancing to a hearing. As Kenty observes, "Women are in the majority on the court mediator rosters that involve family matters, evictions and small claims, coincidentally the court rosters that pay less. In contrast, in Superior Court mediations, in which market rates are charged by the mediators, male attorneys still appear to predominate."

Kenty observes that mediation speaks to the growing interest, possibly client-driven, in resolving matters through negotiation rather than through trial. She echoes Gosline's feeling that ADR allows advocates to adopt a problem-solving approach and has become an essential part of the lawyer's tool kit for women attorneys, as well as men.

Shari Broder

Broder, the first female president of MADRAP, entered the field of ADR after concluding that the arbitrations and mediations she was involved in as a labor and construction lawyer were better processes for clients, and advocates, than the court system in terms of efficiency, user friendliness, and positive outcomes. In fact, while still in private practice, Broder was informed by a senior partner that she was too good at resolving cases.

After the birth of her first child, faced with returning to a firm practice that was inflexible about modified work hours, Broder set out to establish her own ADR practice. It is no surprise that Gosline was her first contact. Gosline assured Broder that she had the skills to be an arbitrator and provided advice on how to get started. Attending an American Arbitration Association meeting in southern Maine on Gosline's advice, Broder met many neutrals and advocates who became mentors and clients. Broder then began to piece together a practice by joining other arbitration and mediation panels and working as a contracted hearing officer for state agencies. Serving as a neutral chair on three person panels for the Maine Board of Arbitration and Conciliation enhanced her confidence as she

gained experience working with other neutrals.

Broder advocates for continued expansion of mentoring opportunities for new neutrals; when she entered the practice, unpaid fellowships were available, but not a reality for her. Instead, she gathered a group of mentors upon whom she relied as she expanded her practice. That group, which included Mark Ayotte of the Maine Labor Relations Board and arbitrator John Alfano, on whom she called regularly for advice on cases or on her practice, formed a critical support network. That helps explain why Broder has been a generous contributor of time, energy, and advice to newer neutrals, which I have personally benefitted from. Broder found that as her neutral practice developed, it afforded her the flexibility she sought in terms of work hours; she initially limited her work to three days a week in order to allow time for family and community responsibilities. When her children were older, she resumed working more hours, which her practice readily allowed for.

Broder finds that people who enter the field of neutral work are generally self-selected. The primary skills, according to Broder, are being impartial and having good people skills, because putting people at ease in uncomfortable or new processes is critical to a successful process. Broder explains that as an advocate, she would much rather work with a neutral who fully understands the process but may not be a subject matter expert than the opposite. For Broder, key to success in the practice is being able to execute the neutral process, whether it be mediation, arbitration, or administrative law judging.

Broder finds that each day in the practice, and each case, is different, and that is what keeps the practice interesting. She also loves being her own boss and having the autonomy to structure her schedule and her workload. And at the end of the day, having helped parties resolve a conflict quickly and in a less destructive manner, is the essence of her love of the practice.

Sheila Mayberry

Sheila Mayberry, who was also mentored by Gosline, began a neutral practice in 1992 and has taken on varied roles including serving as a hearing officer for the National Labor Relations Board and an Alternate Chair for the Board of Arbitration and Conciliation of the Maine Labor Relations Board. Like many ADR professionals, Mayberry wears many hats in the field, including serving as a hearing officer in administrative proceedings, a mediator, and an arbitrator. As with Kenty, Mayberry observes that women have advanced

more rapidly in some ADR sectors than others. For example, she notes that areas of ADR that deal with social services seem to draw more women practitioners while business areas seem to have fewer. She explains that “[l]abor arbitration in particular continues to be dominated by male arbitrators, although progress continues in the acceptance of female arbitrators by labor and management advocates,” and notes that some arbitration associations have undertaken initiatives to foster expanded selection of underrepresented groups of arbitrators, including women, by parties.

Mayberry’s enjoyment of labor arbitration in particular stems from the gratification she finds in “supporting parties in their own agreed-upon process for resolving disputes through a grievance and arbitration process, which in turn stabilizes their relationships around wages and conditions of employment.” She emphasizes the skills required to be a successful ADR practitioner—being a good listener and a skilled writer, maintaining a judicial temperament, and exhibiting patience. Mayberry speculates that the multi-tasking nature of the practice, which usually involves serving as an independent contractor in multiple settings often across various specialties, lends itself to skill sets of those accustomed to multi-tasking in other settings.

Mayberry has repaid in spades the mentoring afforded her through her dedication to mentoring new arbitrators, male and female. As a former member of the national Labor and Employee Relations Association Board and a current co-chair of the New England Chapter of the National Academy of Arbitrators (NAA) with Bonnie McSpiritt, a Massachusetts arbitrator, Mayberry is untiring and creative in her efforts to include new arbitrators in established organizations to which they might not otherwise have access. She routinely creates opportunities for newer arbitrators to interact with more experienced practitioners, provides suggestions for expanded avenues of work, opens up training opportunities to less experienced practitioners, and supports new arbitrators in applying to rosters. With McSpiritt, Mayberry quickly mastered a process for conducting videoconferenced hearings when the pandemic began and subsequently helped teach New England arbitrators how to use the technology. The two then created twice-weekly “drop-in sessions” for New England NAA members, opening it to non-NAA arbitrators as well, to allow arbitrators to continue to understand the technology, establish remote hearing protocols, and discuss the protections necessary for in person proceedings. Once the technology had been mastered by many arbitrators, the sessions continued but expanded their focus to include any topic an arbitrator sought input on.

Remarkably, these sessions allowed newer arbitrators the opportunity to be mentored by not just one or two others, but effectively by all 30 of the session participants. Although I have been practicing as a neutral for almost 15 years, expanding the arbitration component of my practice in recent years raised many questions and opportunities for growth for me. The organized and richly supportive community of peers in arbitration, as led by Mayberry and McSpirt in Maine, is particularly unique among the ADR arenas in which I practice. The creative sharing of expertise and welcoming of new arbitrators led by Mayberry not only serves to advance the practices of individual arbitrators but also has been key to stabilizing the entire field in a time of great uncertainty.

What Lies Ahead?

In Maine, women make up only 38 percent of registered attorneys. Less than one-third of the attorneys within the ADR Section of the Maine State Bar Association are women. As of 2019, approximately one-fifth of arbitrators in the National Academy of Arbitrators were women, although the New England chapter's membership is currently closer to a third female, likely a relative high among the regional groups.

Clearly, despite the progress championed by these pioneering leaders, among many others, women continue to be underrepresented among ADR practitioners. As Mayberry notes, the initiative required to establish a neutral practice and the need to travel to proceedings may inhibit women who are responsible for running a household from entering or advancing in the field. She notes that her own arbitration practice began to expand significantly when her children left home and she had time to foster her practice. As Broder experienced, opportunities for mentorship are an important component in assisting new neutrals develop a practice given the variety and breadth of roles available. Waite, the current president of Maine Association of Mediators, lauds the role that female mediation practitioners have had in recent months, stating that women in Maine have "led the mediation community to a remote practice platform during the pandemic, including through group training, individual mentoring, and leading CLEs for mediators and advocates in moving to remote mediations." She credits ADR professionals at the forefront of this transition with allowing parties to resolve issues successfully while litigation options lagged due to the complexity of moving them to remote platforms.

Surely those women who have helped lead the way, who so generously support those currently entering the field, and who provide dedicated and skilled leadership in the field, will ensure that women continue to help expand the opportunities for parties and practitioners to access alternative dispute resolution processes in Maine.

Interested in Learning More?

Mayberry welcomes contact from practitioners interested in learning more about arbitrator and ADR practice. Mayberry's contact information may be found on her website at www.adrworks.org. For those seeking to identify female ADR practitioners in the field, the Maine Association of Mediators maintains a searchable database on its website. In addition, the Court System's CADRES website maintains a database of approved neutrals, including mediators, arbitrators, and early evaluators. Finally, the National Academy of Arbitrators maintains a searchable database of its members on its website. I close with a note of personal thanks to the women profiled in this article, who generously shared their time, histories, and wisdom with me, indicative of their deep commitment to advancing the careers of female ADR practitioners and the field of ADR generally in Maine.

ENDNOTES

- 1 "A History of Alternative Dispute Resolution: The Story of a Political, Cultural, and Social Movement" by Jerome T. Barrett with Joseph P. Barrett at xxv.
- 2 *Id.* at xxvi.
- 3 "New Dimensions for Justice." Report of the Commission to Study the Future of Maine Courts, Feb. 28, 1993, at 39.

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Want To Be Happier? Admit Your Anger

Perhaps you know someone who seems unruffled all the time and claims to never be angry about anything. This person likely says supposedly encouraging things that linger with traces of resentment, tension, and your nagging sense that there's ire simmering somewhere. You've probably learned to temper yourself in this person's presence because passionate venting usually results in patronizing comments.

"Why are you getting so emotional? I *never* get mad."

One sure indicator that someone is angry is insistence that no anger exists.

There's plenty to be mad about as an attorney – too much work, not enough support, lack of control over the court system. That's not to mention the broader issues of disease, abuse, and prejudice, for starters. These things anger us all, and it's perfectly normal to want to lash out occasionally at injustices and inequities. Those who claim to be eternally fine in the face of all unfairness are either completely checked out or lying. And appearing perpetually cool and composed on the outside may project internal serenity, but unacknowledged anger doesn't go anywhere. It simply bubbles up and seeps out via snarky remarks, impulsive outbursts, recurring health issues, or worse.

Though anger is unattractive and inconvenient, and can be intimidating in its force, the benefit to embracing it as a customary part of lawyering and adulthood is that you become ultimately happier. Facing anger takes courage and humility – precisely what people who claim never to be angry lack – and the reward of taking on that challenge is true inner peace.

Here are four suggestions for handling the reality of anger so that it doesn't sneak out and keep you (and the people you interact with) off balance:

Become more involved with others face-to-face. Have you noticed that it's much easier to be angry with people from a safe distance? Think about it. When someone cuts you off while you're driving or posts something offensive on the Internet, angry judgments – What a jerk! You are such an idiot! – are automatic and uninhibited. You are much more likely to be measured when you confront someone in the flesh and acknowledge that they are a human being much greater than whatever the gesture or statement that got your blood boiling.

Cultivate productive ways to let off steam. How angry you become in response to a trigger – getting overlooked or taken for granted, for example – is directly proportional to how stressed out you are. The lower your stress level, the less pronounced your anger will be. Given that there are anger triggers everywhere, it's wise to always be working on keeping your stress level to a minimum by giving yourself routine outlets: regular exercise, meaningful connecting with family and friends, creative expression through painting, writing, dancing or whatever art or craft you're into; plenty of fresh air and breaks from work. When you make letting loose a healthy habit, you'll be able to resolve your anger and move on more quickly whenever something jostles you.

Address anger as it happens. Anger becomes toxic to your health when it brews over time into bitterness, so it's important to manage it incident by incident. This means communicating assertively (i.e., gently yet firmly) with the person you're mad at, or perhaps discussing your anger with an objective friend or therapist if the source of your anger can't be named or reasoned with. Talking helps to get anger out of your system so that more enjoyable feelings can rise up and take hold.



Channel your anger into positive change.

Anger is an energizing emotion – as opposed to, let's say, sluggish depression or paralyzing anxiety – and so it can lead to great things when directed appropriately. If you're angry about a stubborn situation, the lack of help for a serious quandary, then ask yourself what you can do to produce a solution. What are you sick and tired of in yourself, at home, at work, in your community? If the problem isn't going away anytime soon, vow to take charge and make a difference. The purpose of anger becomes abundantly clear when you see the bold and liberating signs of progress – better laws, safer precautions, wider acceptance, bigger opportunities – that happen when angry people simply refuse to tolerate infuriating conditions any longer.



MaineCF grant support helped establish the Woodward Point Preserve in Brunswick. Photo Yoon Byun

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A Night in the Life of One Lawmom's Effort To Raise a Strong Woman

One night last summer, as I went about my daughter's normal bedtime routine, I saw what I then thought was a great opening to initiate a discussion with her about diversity.

Lady, I said (using my nickname for her), wanna know something cool?

"Yeah!"

You know those hard things you can feel in your elbows and knees and head? Those are bones. They make up your skeleton, and your skeleton helps you stand up.

"Yeah!"

And on top of your bones, we all have muscles. Our muscles help us move, and run, and jump, and climb.

"Yeah!"

On top of our muscles, we all have skin! It helps protect our muscles and our body. And it comes in so many different colors that are all beautiful – dark brown like chocolate; caramel like tea; and pale peach like me.

"Yeah!"

Isn't that exciting!

"Yeah! And guess what?!"

What? I said.

My then three-year-old finished the conversation by shouting with glee, "We all have testicles!"

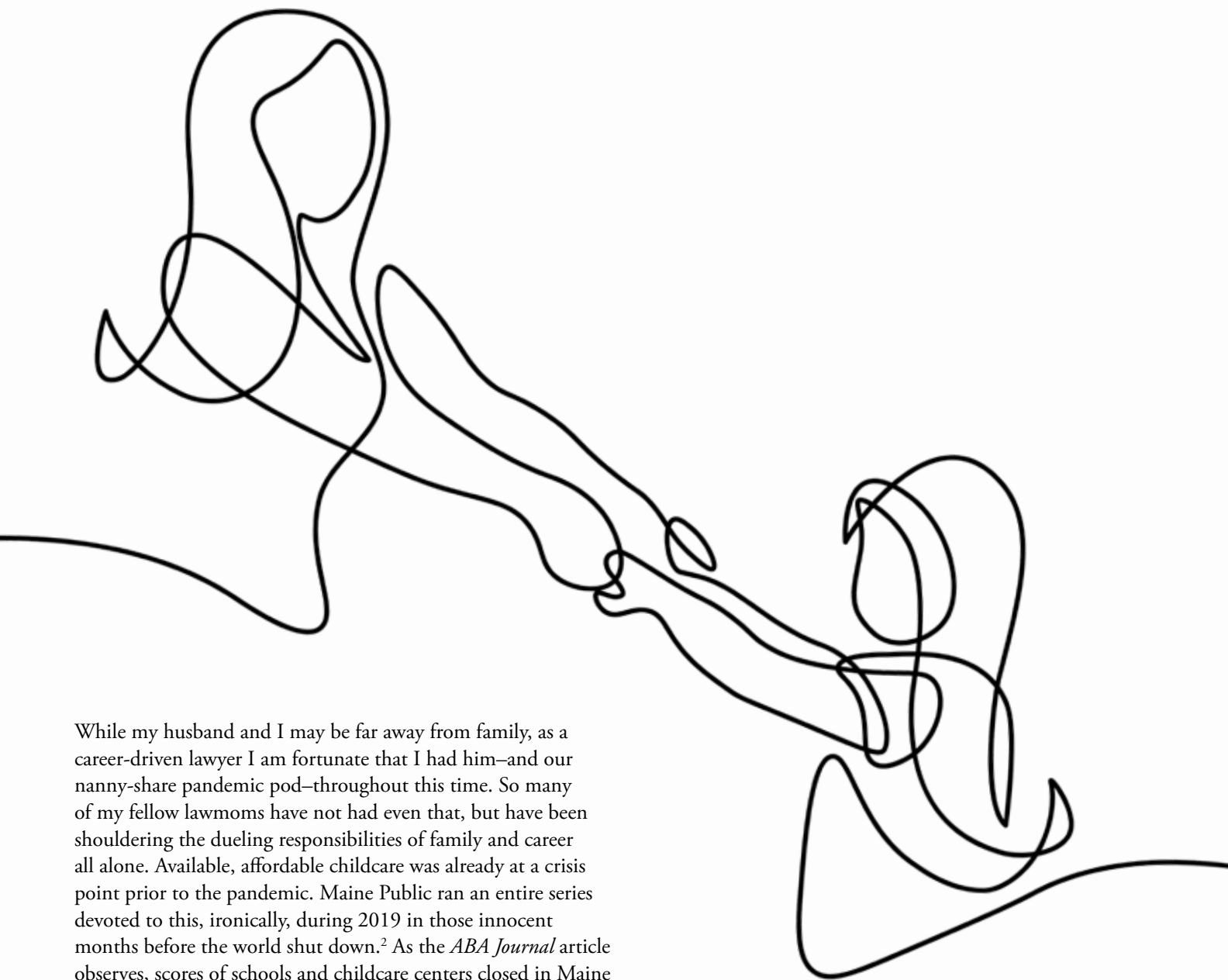
[Cue the shocked eyes, face palm, and calming ocean music. We had suddenly cut from Sesame Street to Avenue Q and I was not ready for the detour.]

It should not have surprised me that even in something as serious and important diversity in the profession, it is my experience as a mom that shapes and motivates my practice as a lawyer. My daughter taught me an important lesson that night. When we approach a conversation with an open mind, enthusiasm, creativity, and most importantly humor, we are far more likely to understand one another.

Life as a lawmom is anything but pedestrian. I wake up early and stay up late. I navigate the ever-shifting tax code all day. And these days I exit my home office to navigate the changing moods of my feisty, ultra-independent little girl all night.

I am my family's breadwinner. From the earliest days of parenthood, my husband has been the parent to stay home with our daughter and continue to build his own freelance design portfolio. Prior to the pandemic, I had three hours a day with my daughter while she was awake. That's it. Three hours! I love being a hands-on mom and so cherished that little time that I had with her each day. If there is any silver lining of the pandemic, it is that I have been able to be home with her, to watch her learn and grow and discover and laugh, for far more than three hours a day. In its own way, the time I have been home because of this pandemic is also time I will cherish.

It has, however, come at a cost. That all-day, all-night cycle is vicious in the best of times. The pandemic raised the bar. I am not alone. As reported in the *ABA Journal*, the pandemic left lawmoms on the brink of burnout.¹



While my husband and I may be far away from family, as a career-driven lawyer I am fortunate that I had him—and our nanny-share pandemic pod—throughout this time. So many of my fellow lawmoms have not had even that, but have been shouldering the dueling responsibilities of family and career all alone. Available, affordable childcare was already at a crisis point prior to the pandemic. Maine Public ran an entire series devoted to this, ironically, during 2019 in those innocent months before the world shut down.² As the *ABA Journal* article observes, scores of schools and childcare centers closed in Maine due to the pandemic. Many never reopened, leaving parents in the lurch.

The need for flexibility in daily schedule highlighted another pain point in the profession. As an industry, we have cultivated this aura of ultra-responsiveness. Technology made it possible for us to be available around the clock. For many lawyer-parents, working odd hours outside of the standard business day is a necessity. Particularly so right now as we grapple with the lack of available (forget affordable) childcare and instead must act as lawyer/teacher/caregiver/parent all at the same time. Reflecting back on this, a line from a homily I listened to several years ago runs through my head: “If no one ever rests, then no one ever rests.” The pandemic blurred the lines between flexibility, necessity, and expected availability.

We are always on. For parents, that “always on” life takes on infinitely greater weight. We are always on for every bump and bruise. Always on for every midnight call for water (or the W.C.). Always on for every bitter disappointment, every bump in the road, every difficult conversation. Always on, making every effort to model our best selves to serve as a living example of the qualities, characteristics, and value we hope our children will one day grow into.

For me, the qualities I wish for my daughter include being a strong woman who not only owns her own value but also recognizes and celebrates that same value in others. I want my

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David J. Backer, Esq.
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daughter to know that part of owning her own value is to make caring for herself a priority. I want my daughter to see that as a woman she can have dreams and aspirations. I want her to see that she will be treated equally, celebrated for her mind and her skills and her curiosity, and not penalized for her gender. I want her to celebrate the differences that make others unique, and be able to recognize the inherent challenges that other people have had to overcome. I want her to champion equity and inclusivity for all other people, regardless of ethnicity, gender, religion, ability, sexual orientation, or any other characteristic that, today, is often a bar to the bar and so many other professions.

I also want my daughter to be able to have difficult conversations with more than a hint of the wry humor she is already well on her way toward developing.

No, my Lady, we do not all have testicles.

And, with no offense to the male-half of the Maine Bar, the fact that we Maine lawyers do not is beautiful.

ENDNOTES

1 Liane Jackson, "'How Pandemic Practice Left Lawyer-Moms Facing Burnout,' ABA Journal (Aug. 1, 2021), *available at* https://www.abajournal.com/magazine/article/how-pandemic-practice-left-lawyer-moms-on-the-verge?utm_medium=email&utm_source=salesforce_425101&utm_sid=01637210&utm_campaign=weekly_email&promo=&utm_content=&additional4=&additional5=&sfmc_j=425101&sfmc_s=45943631&sfmc_l=1527&sfmc_jb=18005&sfmc_mid=100027443&sfmc_u=12312804

2 <http://projects.mainepublic.org/child-care-deep-dive>; <https://www.mainepublic.org/maine/2019-06-24/maine-public-deep-dive-takes-in-depth-look-at-child-care>.

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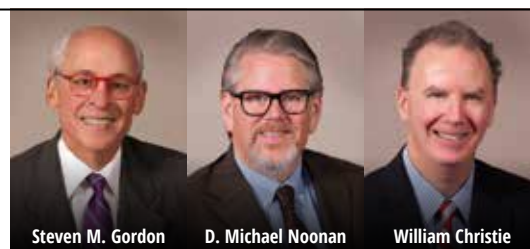
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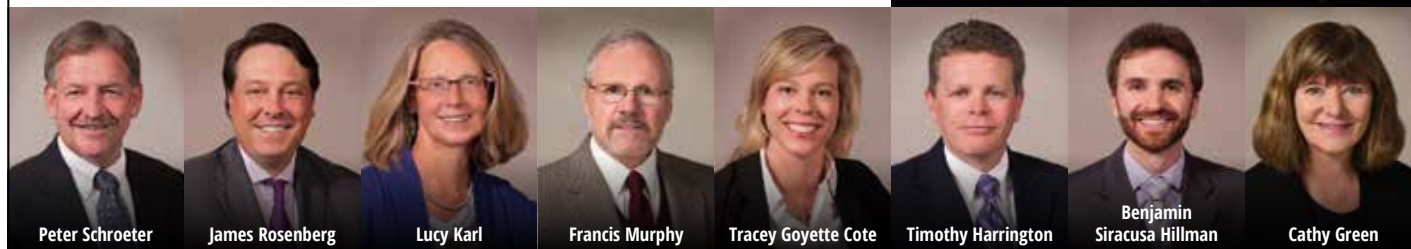
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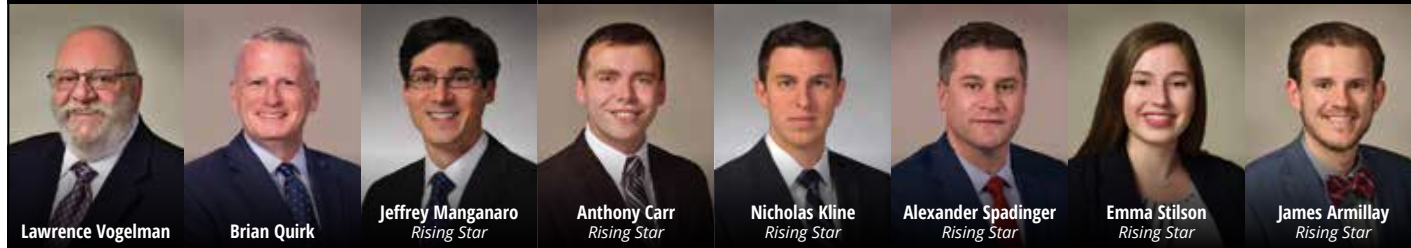
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BIPOC Lawyers in Maine: Past, Present and Future

Diversity is . . . a fundamental component of productivity, and I believe that law is the ultimate tool in the pursuit of freedom and justice.” Danielle Conway, former dean of the Maine Law School.

Depending on what year it is, Maine is either the whitest or second whitest state in the U.S., a persistent reality mirrored by the racial composition of the Maine Bar since its inception. To the extent that there were BIPOC (Black, Indigenous, and People of Color) lawyers in Maine in the 19th century, all available evidence suggests that they did not find our state a particularly welcoming place. On July 3, 1844, Macon Bolling Allen was admitted to the Maine Bar, becoming the first African American attorney to be admitted to practice law in any jurisdiction in the United States. A year later, he relocated to Massachusetts, reportedly because whites were unwilling to hire him and the sparse African American community could not afford his services. While in Massachusetts, Attorney Allen became the first Black man in the U.S. to appear as counsel during a jury trial, and he subsequently served as a justice of the peace in Middlesex County, Massachusetts. He then emigrated to South Carolina, opening what is widely believed to be the first African American law firm in the U.S. before being elected by the state legislature to serve as a Charleston County judge in 1873 and again in 1876.

Thirty-four years later in 1879, John H. Hill, born into slavery in Charles Town, Virginia, became the second BIPOC attorney to be admitted to practice in Maine. Shortly thereafter, Attorney Hill moved back to West Virginia where he became the first African American admitted to the bar of that state in 1881. Following Attorney Hill’s departure from Maine,

there appears to be no record of any BIPOC attorneys here for another 33 years.

In 1913, Milton Roscoe became the first African American to graduate from the University of Maine School of Law and to actually practice law in Maine. Attorney Roscoe maintained his law practice in Bangor for 51 years and was acknowledged to be the only Black lawyer in the state when he passed away in 1964.

Three African American lawyers in 120 years! By contrast, South Carolina, the former cradle of the Confederacy, reportedly admitted 168 African American jurists to its bar between 1868 and the advent of the civil rights movement of the late 1960s, and some studies estimate that around the turn of the 20th century, three quarters of all African American lawyers in the U.S. were practicing in former Confederate states.

Until last year, not much had changed in Maine since Attorney Roscoe took down his shingle. Although no statistics were kept until recently, it is generally accepted that during the first decade of the 21st century, there were less than 10 BIPOC attorneys practicing in Maine. Perhaps more illustrative is the fact that there has been exactly one African American state court judge in our 201-year history. No BIPOC lawyer has ever been appointed to sit on the federal bench in Maine.

The brutal murder of George Floyd at the hands of the Minneapolis police on May 25, 2020, engendered a heightened awareness of racial inequity and injustice in all of our

Racism and implicit and explicit bias thrive in a vacuum where there can be no challenge to erroneous assumptions. On the other hand, it is our firm belief that a more diverse Maine Bar in which all aspects of our communities are amply represented will ultimately result in a more equitable legal system for all Mainers, a goal to which every member of Maine's legal community should aspire.

institutions, including the Maine Bar and Maine's judiciary. Demographic information collected by the Board of Overseers of the Bar and the Maine State Bar Association (MSBA) in the immediate wake of Floyd's murder revealed that of the roughly 3800 active members of the Maine Bar, there are approximately 29 BIPOC attorneys practicing in Maine. This figure simultaneously represents less than one percent of active Maine lawyers and the highest number of BIPOC attorneys at any point in Maine's history.

The MSBA also circulated a survey seeking data about its members' experiences and observations regarding "Racial and Ethnic Discrimination in Maine's Legal Community." The survey results are more or less what could be expected from members of a Bar that is more than 99 percent white. The majority of respondents opted not to answer several of the questions, presumably because they either had no interest or because they had nothing to report. To the extent that our colleagues did respond, for the most part a majority indicated that they had not witnessed any racial or ethnic discrimination. This can hardly be surprising, given the pronounced lack of diversity in our state.

The survey data leaves one with the distinct impression that as of 2021, Maine's BIPOC legal community remains largely invisible to most members of the Maine Bar. One succinct comment appears to sum up the general import of the survey data: "I have not observed any racist acts, but there is admittedly very little diversity in Maine and [in] the Maine Bar."

In order to have a collective voice in these post-Floyd discussions, in July 2020 Maine's BIPOC legal community decided to form its own section within the MSBA, the first organization exclusively devoted to BIPOC attorneys in Maine's history. Upon surveying the unique difficulties faced by minority lawyers in Maine, the BIPOC Lawyers Section resolved to provide support, mentoring, networking, education and fellowship for Maine's BIPOC legal community, to

address the unique issues faced by Maine attorneys of color and to increase diversity in the Maine Bar.

Some may ask: why does the Maine legal community need to be more diverse, especially when the vast majority of Maine's residents are Caucasian? How will these efforts benefit the Maine Bar, Maine's judiciary, etc.?

Perhaps the most significant finding of the MSBA survey is that to the extent that Maine's non-BIPOC legal community has witnessed racism, disparate treatment, etc., these observations are entirely consistent with firsthand accounts of what BIPOC attorneys and litigants regularly experience while navigating Maine's legal system. The following non-exhaustive list is a sampling of observations that have been reported by both Maine's BIPOC attorneys and survey respondents:

- BIPOC attorneys being held to different standards of practice than white attorneys, being treated as suspect with respect to their skills, credentials, etc.
- Court staff assuming that attorneys of color are not lawyers, treating them in a less favorable manner even after they are identified as attorneys, etc.
- Comments espousing beliefs in negative racist stereotypes about different minority groups by attorneys and members of the judiciary;
- Disparate treatment of BIPOC litigants in Maine's criminal justice system, including with respect to bail conditions, plea agreements, sentencing, etc.;
- Prosecutors making racist assumptions that Black males from out of state only travel to Maine to engage in drug trafficking or to otherwise engage in criminal activity;
- BIPOC attorneys being treated as the "other," subjected to racist, insensitive inquiries, etc. Example: a white attorney asking to touch a female BIPOC lawyer's hair;



and

- Civil litigants actively forum shopping for a venue in which anti-minority sentiment against the opposing party was perceived to be more likely.

Only 49 of 1376 survey respondents accepted the MSBA's invitation to "describe . . . experiences or observations [with racism, disparate treatment, etc.] regarding members of the judiciary," and only 35 responded to a similar query about courthouse staff. That said, for the most part these responses consistently describe the disparate treatment of BIPOC litigants, particularly criminal defendants. More specifically, survey respondents describe an environment in which BIPOC litigants endure both explicit and implicit bias in Maine's courthouses, as expressed in various ways – disparate bail and sentencing decisions, offhand inappropriate comments, and studied disinterest or pronounced skepticism with respect to the testimony of BIPOC defendants and witnesses, to cite a few examples. Perhaps equally telling are comments suggesting that some members of Maine's judiciary lack experience in dealing with minorities and otherwise display a lack of cultural awareness and empathy.

All of these comments demonstrate the need for increased diversity in Maine's judicial system. Racism and implicit and explicit bias thrive in a vacuum where there can be no challenge to erroneous assumptions. On the other hand, it is our firm belief that a more diverse Maine Bar in which all aspects of our communities are amply represented will ultimately result in a more equitable legal system for all Mainers, a goal to which every member of Maine's legal community should aspire. To state this premise more colloquially, it becomes more difficult to cast a person as the "other" after you've walked with them for a piece.

That said, it has proved difficult to convince BIPOC attorneys and law students to come to Maine, perhaps equally challenging to convince these folks to stay. The political climate in recent years, as reported by the national media and otherwise, has only strengthened the outward perception that, as in Attorney Allen's day, Maine is not particularly welcoming to BIPOC attorneys or minorities in general. In order to counter this unfortunate narrative, the BIPOC Lawyers Section and the MSBA's Diversity Committee are working to increase the visibility of Maine's BIPOC community, both within and out of the state, and to implement and support initiatives and programs to recruit and retain BIPOC attorneys. We welcome the support of all members of Maine's legal community in this endeavor.

MSBA Undertakes First-Ever Diversity Survey

On Sept. 18, 2020, the Maine State Bar Association and the Board of Overseers of the Bar distributed a survey called "Racial & Ethnic Discrimination in Maine's Legal Community" to all MSBA members and attorneys licensed to practice in Maine. The survey, which remained open through Oct. 2, 2020, was taken by 1,376 individuals, and provided insight into the experiences of attorneys here in Maine.

Of the survey's 14 questions, several were open-ended and designed for comments only. The others were designed to provide more sophisticated, quantifiable feedback. On the next page you will find some highlights of the data collected.

Q: How often on average do you interact with black, indigenous or people of color within your work as an attorney in Maine?

Out of 1,368 respondents, answers ranged from monthly (24.27 percent) and weekly (19.96 percent) to never (12.28 percent).

Q: Within the context of Maine's legal community, have you experienced or witnessed discrimination, disparate treatment, or problematic comments that you believe were made on account of race or ethnicity?

Out of 1,342 respondents, 72 percent said no and 28 percent said yes.

Q: Within the context of Maine's legal community, how often (on average) have you experienced or witnessed racially or ethnically-motivated discrimination, disparate treatment, or problematic comments?

Out of 373 respondents, 38 percent said yearly and 24 percent said monthly. Thirty percent, however, checked "Other" and provided a wide range of comments.

Q: Have you experienced or witnessed racially or ethnically-motivated discrimination, disparate treatment, or problematic comments between clients and attorneys?

Out of 369 respondents, 74 percent said no and 27 percent said yes.

Q: Have you experienced or witnessed racially or ethnically-motivated discrimination, disparate treatment, or problematic comments in the legal employment realm among coworkers?

Out of 364 respondents, 71 percent said no and 29 percent said yes.

Q: Have you experienced or witnessed racially or ethnically-motivated discrimination, disparate treatment, or problematic comments involving other Maine attorneys? (e.g., at a networking event or CLE, in court, or other event associated with the legal profession)

Out of 360 respondents, 51 percent answered yes and 49 percent answered no.

Q: Have you experienced or witnessed racially or ethnically-motivated discrimination, disparate treatment, or problematic comments involving members of the Judicial Branch?

Out of 355 respondents, 80 percent answered no and 20 percent answered yes.

.....

The survey results include many hundreds of comments the Diversity Committee has reviewed and considered in its discussions about how to move forward in addressing diversity, equity, and inclusion among the Maine Bar. Look for a comprehensive summary of the survey on www.mainebar.org soon. In addition, more information on the MSBA's efforts to curb racism, discrimination, and harassment, and to promote a more inclusive Bar will be shared on our website and in our publications in the new year.

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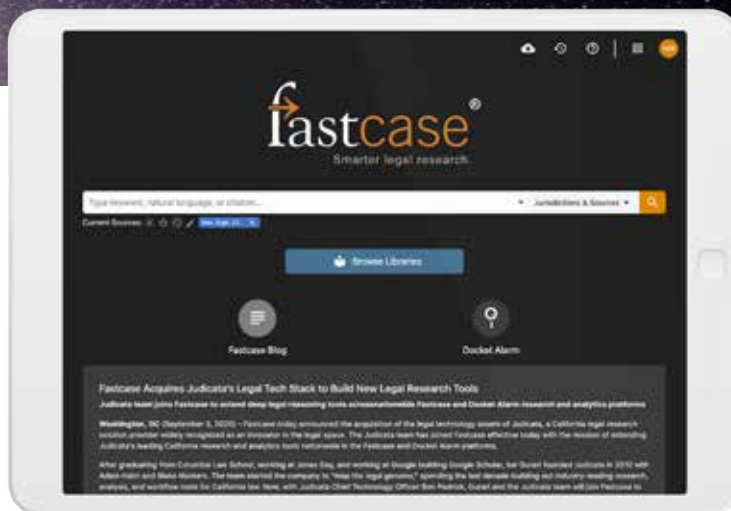
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Women Lawyers in Maine: 150 Years and Counting

Nearly 150 years after Clara Hapgood Nash was sworn in at Machias, Maine's women attorneys reflect on the challenges they have faced—and overcome—in the industry.

In 1872, Clara Hapgood Nash became the first woman to be admitted to the Maine Bar, and the sixth woman attorney in the nation.¹ At the time, only 11.5 percent of Maine women were employed in any capacity.² Upon her admission, a male colleague acknowledged the anomaly, but described her as a “modest and refined lady of fine literary and legal attainments” whose “pleasant and courteous” demeanor would help her “overcome the prejudice existing against women being attorneys.”³ The Justice presiding upon Nash’s admission, William G. Barrows of Brunswick, had this to say upon examination of Nash’s papers: “I am not aware of anything in the Constitution or laws of this State prohibiting the admission of a woman, possessing the proper qualifications, to the practice of law. I have no sympathy with that feeling or prejudice which would exclude women from any of the occupations of life for which they may be qualified. I direct that she be admitted.”⁴

Despite Nash’s forward-thinking admission panel, the pace of progress would be slow for women attorneys, both in Maine and elsewhere. It took 27 additional years and the enactment of an anti-discrimination statute before a second and third woman would be admitted to the Maine Bar.⁵ And, it would take more than a century after Nash’s admission for Maine to see its first woman judge, in 1973.⁶ Even today, women have not yet reached parity with men in this profession, as indicated by the lack of retention of women in the field. As of 2021, the Board of Overseers reports that 38 percent of Maine attorneys are women, even though the University of Maine School of Law reports that women make up 62 percent of the students currently enrolled in the law school’s 1L class.⁸

As the 150th anniversary of Nash’s admission approaches, some of Maine’s women attorneys reflect on their experiences and their hopes for the future of the profession. The stories they shared make clear that, even if not everyone knows the story of Clara Hapgood Nash, Maine women attorneys have carried on her tradition with skill, dedication, and more than a little bit of grit.

Hard-Fought Progress

Nash’s admission in Machias did not herald easy going for women wanting to follow her into the profession. Six months after Nash became a lawyer, the U.S. Supreme Court ruled that women did not have a Constitutional right to practice law.⁹ In a concurring opinion, Justice Bradley wrote that, “It certainly cannot be affirmed, as an historical fact, that [the right to pursue a legal profession] has ever been established as one of the fundamental privileges and immunities of the sex... The natural and proper timidity and delicacy which belongs to the female sex evidently unfits it for many of the occupations of civil life.”¹⁰

Despite Bradley’s offensive logic, two women have now served as Chief Justice of Maine’s Supreme Judicial Court, and many others have held highly respected positions in the judiciary, private practice, and public sector. Though there are still barriers, many women attorneys who practice today say they have witnessed significant progress over the course of their careers.

When Leigh Sauflley, Dean of the University of Maine School of Law and former Chief Justice of the Maine

Supreme Judicial Court, started law school in 1977, hers was the first Maine Law class to have as many female as male students. That gender diversity did not always translate into practice, however, and many women attorneys noticed that Maine's legal profession remained male-dominated.

"I remember looking back, 10 years or 15 years after graduating, and realizing that of the women that were in my class [of 1983], there were only a handful of us that were still practicing law," said Maine Superior Court Justice Michaela Murphy.

This may be the result of the fact that despite gender parity in law school, women often found a cold welcome in practice. Saufley "learned pretty quickly that there were a number of people in the generation ahead ... who were not quite ready for women opponents. They didn't have the slightest idea how to work with me or with the other women who eventually arrived." Ann Drew, Esq., Chief Risk & Compliance Officer at WEX, echoed this sentiment, noting, "I've always been underestimated, always."

Many women attorneys have experienced blatant and unconscious bias, both inside and outside the courtroom. Saufley remembers a story from a colleague who went for a job interview early in her career only to be asked how fast she typed, and what form of birth control she used. Today, although such bias may often be more subtle, it persists. It is "normalized to be treated with some kind of suspicion," said Sherri Mitchell, the first Wabanaki woman born in Maine to practice law here.

Women also face career opportunity limitations based on client bias. "I always suspected that if a man came into my law firm and was looking for someone to help them out [with a financial or] liberty interest, their first choice probably would not be a woman, because people don't think that women can accomplish what men can," said Murphy. "I think that is certainly a barrier that women have faced. I'm hoping that's not true anymore, but I suspect that that still goes on, [because] I hear from other women attorneys that that still goes on."

In addition to being passed over for opportunities, women sometimes have to navigate sexualized interactions in a professional setting. "I've taken [young women] to programs from time to time and they would get sexually harassed – right in front of me," said Aria Eee, Executive Director for Maine Board of Overseers of the Bar. Once, she corrected an attorney whose eyes were focused on a woman attorney's chest: "I had to say, 'Please don't look at her that way. Her eyes are up here.'"

For Maine's criminal defense attorneys, sexist policies have impacted their ability to do their jobs. In a move that shocked many, in 2015 the Cumberland County Jail told women attorneys that they had to remove their underwire bras before meeting with their imprisoned clients, because they were setting off the metal detectors.¹¹ Two-thirds of all bras sold in the United States are underwire bras.¹²

Just a few years ago, the Maine Bar was rocked by an article penned by Pine Tree Legal Assistance, Inc.'s Executive Director Nan Heald, in which she recounted the then-current

Timeline Points of Interest for Women

1873 First woman in jury trial – Clara Hapgood Nash.²²

Oct. 1872 First woman lawyer in Maine. Clara Hapgood Nash (Machias).²¹

1899 Statute adopted that specifically prohibited discrimination on the basis of sex in the admission of attorney.²³

1899 First woman originally from Maine to practice law anywhere: Portland HS graduate Gail Laughlin graduates from Cornell Law School and begins practicing in New York.²⁴

experiences of Pine Tree's women attorneys.¹³ That article led to the adoption of a CLE requirement focused on harassment and discrimination and aimed at curtailing the kinds of poor conduct detailed in the report. Even though this behavior has not yet been eradicated, many attorneys see a hopeful trend emerging.

"The things that police officers would say to me and other women, the things that [District Attorneys] would say to me and other women, the things that court officers would say to me and other women, the things that judges would say to me and other women, would never, ever be acceptable now," said Murphy. "There's been a sea change, not just in how women are treated, but in how people of color are treated, immigrants, people with disabilities, all those things have changed since 1980. You can't even measure the changes. I can't imagine what it would have been like for a young woman of color to have started when I started, I don't know that it would have been possible."

Of course, that is not to say it is now easy for women attorneys of color in Maine. When Penobscot Assistant District Attorney Shelly Okere began practicing here, she had fleeting fears about how people would treat her. Okere said she has been treated well by the bench but has had some less pleasant experiences with the defense bar. "I have had a defense counsel act like 'wow, how do you do your hair' and want to touch it. Instead of treating you like an adult human being, they treat you more like a child or a puppy, which is obviously a problem. But is that because I'm Black? Or is it because I'm a woman? Or because I'm young-ish? I don't know."

In contrast, immigration lawyer Jenny Beverly is grateful that her personal identity has not affected how she is treated in the courtroom. This may be helped by the demographic makeup of the court in which she practices and the immigration bar generally. There are quite a few women judges in immigration court, Beverly noted, and the cases involve a diverse client population represented by lawyers with similarly diverse backgrounds. "I personally have not experienced" gender or ethnic bias in immigration court, she shared.

In-house lawyers are also seeing a shift in the legal profession and in their companies more broadly. "I have seen a distinct change over the last, I would say, five years in looking to promote women and people of color," said Ashleigh Kyle, Associate General Counsel at Becton Dickinson. That change, however, is still a work in progress, and women are still underrepresented in leadership roles. "I still feel like they're working on the top," said Kyle. "You look at law schools, and you have at least 50 percent women, and then you look at those starting at a law firm and typically it's split. But when you look at the top, that's not what it looks like. I don't see a lot of women general counsels, but I feel like there are plenty of women that are skilled enough to be general counsels at large companies like mine."

The gender bias encountered by newer attorneys may be seen as less egregious than what some of their predecessors faced, but they do continue to experience it in ways that affect their careers and professional opportunities. For example, Kyle was often excluded from the networking-heavy golfing tournaments to which her male colleagues were invited.

1929 First woman lawyer to serve in the Legislature:
Gail Laughlin.²⁶

1899 Second woman to
practice law in Maine: Helen
Knowlton (Rockland).²⁵

1932 First woman lawyer to
argue case in front of the Law Court:
Alice Parker.²⁷

“There definitely is that old boy’s network at some places,” she said. She also noted other times when she was on calls or in meetings during which she felt “dismissed.”

Whether it happens in client meetings or in the courtroom, the bias experienced by women does not come only from their colleagues. Okere shared that after introducing herself as a prosecutor, a white male defendant approached her and asked to speak to the prosecutor. “I’m thinking in my head, well, maybe he means the Chief DA? I told him ‘She’s not here, but I’m an assistant district attorney.’ He kept saying no. It took him three times to understand that I’m not just a [legal] assistant or a defendant in a suit standing here talking to everyone.”

Even the women who have persevered and risen to positions of authority are not free from the implications of gender bias. According to Murphy, being a woman jurist means being constantly aware of how one is being perceived. “I think most of us feel like we need to explain ourselves more than the men do. It’s unfortunate, but I just think that’s reality,” she said. “If we are talking to a male defendant, I don’t think my male colleagues worry about how their authority is going to be perceived by that man; I have to think about that all the time.”

Much like Nash and other pioneering legal minds who came before her, Okere said that being part of a minority group in the Bar has given her the burden and the opportunity of being an educator to those around her. “I didn’t initially want to be a spokesperson,” she said. “But at the same time, I am situated to do that. ... I have thought long and hard about a lot of

topics, and I have the ability to speak. So, I pushed those feelings aside rather quickly and embraced it.”

Following in Nash’s footsteps with tenacity and persistence, women lawyers have steadily broken barriers. For some, it would be a single significant milestone – such as Paula Silsby’s ascension as the first woman to serve as Maine’s U.S. Attorney or Phyllis Givertz’s election as the first woman president of the Maine Bar Association – while others worked their way up the ranks, breaking barriers the whole way – such as Janet Mills, who served as Maine’s first woman District Attorney, first woman Attorney General, and now Maine’s first woman governor.

Many of these barrier-breakers are still practicing today, continuing to work for and benefit from past efforts to attain equality in the profession. “I think of myself as from the legal era of women who have shards of glass in our hair,” said Saufley. “We did not break the ceiling. We benefited from those who came before us, who shattered it.” Saufley became Maine’s first woman to serve as Chief Justice in 2001, eighteen years after Hon. Caroline Glassman became the first woman to sit on the Law Court.

While some “firsts” were marked with great fanfare, such as when Hon. Harriet P. Henry became the first woman to serve as a District Court judge in 1973, other firsts have been lost to time. For example, despite efforts to uncover the names of some of the first women of color to practice in Maine, the authors have been unable to identify those individuals to give credit where credit is due.

1938 First woman to graduate from a Maine Law School (the Peabody Law School in Portland): Velma Peabody.²⁸

1968 First woman graduate of the University of Maine School of Law: Paula Sawyer.³⁰

1953 First woman partner in a major law firm: Sigrid Tompkins.²⁹

Women In Court

Nash first practiced in front of a jury in 1873, but nearly 150 years later, women trial attorneys are still fighting for equity. The slow progress is somewhat surprising to Mitchell, who noted that among the Wabanaki, it was always the women who made the decisions in the community. “All problems were brought to the clan mothers, who made determinations about how to address problems and difficulties that came before tribal leadership,” she said. In contrast, Mitchell noted, for the most part women have not been “acknowledged as part of the contemporary (western) legal system.”

In western systems, women attorneys have made progress in some trial areas – notably criminal law and family law – but some areas of practice remain elusive. In particular, women remain a rare sight in civil jury trials, let alone sitting first chair. “I don’t see a lot of women in business court,” said Murphy, who sits on that court for about half the year. “I’m always happy to see [a woman in that venue], but they’re often sitting second chair.”

Barriers in the public sector, in the AG’s offices, in the legislature, and in DA’s offices were shattered a long time ago, Murphy said, “but in the business law, the private sector law, they just haven’t made it through.” Though there are a handful of women that anybody would agree could handle a big civil case, and many more who could succeed if given the chance, “I just don’t see [women] doing complex civil litigation. They may be the people who are writing the brilliant briefs, but I don’t see them in the courtroom. And that makes me sad because I don’t think that’s right.”

In some areas of the state, women (and in particular, women of color) are still seen so infrequently in court that they still face questions about whether they are, indeed, “actually lawyers.” Mitchell, who has primarily worked in the tribal courts but also practices in the district and superior courts, said that “every male judge that I’ve come before [in State courts] has asked me if I was really an attorney.” Though that attitude may sound antiquated to lawyers who practice in courts with a higher prevalence of women or who may not have experienced it firsthand, Mitchell’s experiences all happened in the last ten years.

While it is, unfortunately, not uncommon for new trial attorneys to experience some form of professional hazing, events described by experienced attorneys like Mitchell demonstrate that women continue to face these explicit biases and challenges well into their careers. “When we’ve talked about this at [CLE] programs, I’ll have young men raise their hand and talk about how it happened to them for a couple of years and then it was fine. I’m happy for them that it ended that way, but the hazing part of being a trial lawyer doesn’t seem to end that quickly, especially for a woman who looks young,” said Eee. Persevering through the hazing often requires women to work harder than their male counterparts. “You work twice as hard. That’s how I proved myself - always being very prepared,” Eee said.

Saufley’s experience was similar to Mitchell’s and Eee’s. As the second woman to practice in Hancock County – more than a century after Nash became the first woman admitted to the Maine Bar – Saufley said that people often presumed

1973 First woman to serve as a
Maine Judge: Hon. Harriet P. Henry.³³

1980 Hon. Jesse H. Briggs Gunther:
first woman appointed to the Superior Court.
[Appointed to district court in 1976, elevated in
1980. Left her position to raise her daughter in
1986, then was re-appointed to the district court
bench in 1990.]³⁵

1972 First woman prosecutor:
Suzanne E.K. Smith.³²

1972 First woman professor at
Maine Law: Judy Potter.³¹

1974 First woman president
of Cumberland County Bar
Association: Sigrid Tompkins.³⁴

she was another attorney's secretary when she showed up in court. She handled the challenge by looking for the humor in the situations she faced. Older male attorneys "would underestimate me and my female colleagues," she said, "and I learned very quickly that I could outwork almost anybody there." After Saufley prevailed in a contested hearing, a male opposing counsel said he had been afraid Saufley was going to cry in the courtroom. Saufley's response was to warn him (with her characteristically dry humor) that, "if anyone's going to cry while we're litigating, it's going to be you."

The Challenges of Practicing-While-Parenting

Not long after participating in her first jury trial, Nash faced another challenge – she became a working mother. In fact, given the timing of her son's birth in 1874, Nash had been significantly far along in her pregnancy during that barrier-breaking trial.¹⁴ As the Maine Bar's first working mom, Nash would continue to practice-while-parenting for several more years before moving back to Massachusetts (where the bar was not yet as progressive as Maine's when it came to accepting a woman colleague).¹⁵

Unfortunately, but perhaps not surprisingly, Nash's experience did not signal that the bar had swung wide open for all women wishing to practice law and have families. It would be another hundred years before patchwork legislation began to arise for the benefit of working mothers in response to the rampant discrimination they faced. In 1978, Congress enacted the Pregnancy Discrimination Act.¹⁶ Ten years later, Maine's Legislature passed the Maine Family Medical Leave Act,¹⁷ providing some workers with eight weeks of unpaid leave in a

two-year period, and in 1993 Congress followed suit with the federal FMLA.¹⁸

These legal protections did not, however, eradicate child-related discrimination for most working-mother attorneys, in Maine or elsewhere, since the Acts' protections were limited to times of pregnancy. At the time of their enactment, the Acts did not protect women from being asked during interviews about their birth control choices, nor do they (even today) specifically protect women passed over for positions because they may one day choose to have children. Thus, once a child is born, the Acts offer little to no help for women balancing the demands and societal expectations of motherhood with their careers.

"When I was starting out, being in private practice for women was incredibly challenging because of the way law firms ran things. It was a very unforgiving schedule for family life," said Murphy. "I think a lot of women that I know who were going to school when I was found other ways to practice law that did not involve working 80 hours a week, because of course, we were having children and building our families, and also just trying not to be exactly like the men who had come before us, as far as sacrificing everything in our lives to the law."

Nonetheless, Maine women attorneys have made it work – often with no role models before them, by forging their own path. Some women, like Hon. Jesse H. Briggs Gunther, took breaks between barrier-shattering career accomplishments to care for their children. Briggs, the first woman appointed to the Superior Court in 1980, left the bench to raise her

1980 First woman district attorney: Janet Mills.³⁶

1983 First woman president of the Maine State Bar Association: Phyllis Givertz.³⁸

1980 (approx.) First woman Chief Judge for Pleasant Point – Passamaquoddy Tribal Court: Shirley Cogswell (not legally trained) (Passamaquoddy elder).³⁷

daughter, only to be re-appointed to the District Court bench several years later.¹⁹ Other mothers, like Nash, chose to continue practicing. No matter their choices, however, women who face this difficult crossroads have endeavored to slowly erode stereotypes and score progressive structural changes that benefit all working parents.

Beverly credits her ability to find balance to owning her own small firm and having a supportive husband and family who understand the importance of helping her create the time and space to work, but she knows she is lucky. “I know a lot of parents have no other choice. ... I had the privilege of saying that I don’t want to put my daughter in daycare yet.”

Beverly’s flexibility, of course, came at a price. She had to become far more efficient with her limited time and had to learn to juggle her child’s needs with legal work – both figuratively and literally (often hammering out briefs from home with a sleeping child on her lap). Having the support of other women lawyers has helped, too. Beverly said she has benefited from colleagues’ willingness to provide childcare or share research. “I have a very strong support network. And I’m very, very grateful for that.”

Unfortunately, Beverly knows many women who have not been as supported. “I’ve spoken to a lot of women who’ve had a lot of difficulty in larger firms,” she said. The women who have children or want children “aren’t able to change their schedule, the way I have been able to, to accommodate the child as well.”

The pace may be slow, but the dogged commitment of working-mother attorneys has led to a cultural and structural change that is increasing the momentum of workplace equality. Stacey Neumann, a partner on the management committee at Murray Plumb & Murray, thinks that private and public employers alike are making strides. Neumann, a mother of three children, worked at the U.S. Attorney’s office during her first two pregnancies, where she was not entitled to paid leave.

Despite the challenges, Neumann says she found immense support and understanding from her colleagues regarding her parenting duties. Because she had not worked at the office long enough to even be entitled to unpaid FMLA leave during her first pregnancy, nor to have saved up enough paid sick and vacation leave to cover her while she was out, she was able to take time off only because an older male employee anonymously donated his own accrued sick time to let her stay home with her child – a gift she remains grateful for. And, she noted, things are continuing to change for the better. Since last year, employees of the United States Attorney’s Office and other civilian federal agencies are entitled to three months of paid parental leave, regardless of gender.²⁰

According to Neumann, providing family leave for both men and women is vital to advancing career opportunities for women attorneys. “Until we start understanding that raising children is a people-issue, not a women’s issue, women will continue to face discrimination in hiring and stigma in the workplace,” she said. Neutralizing parental-leave practices by allowing men to take family time is not only good for

1983 Hon. Caroline Glassman: First woman Supreme Court Justice.³⁹

1992 First Penobscot woman tribal judge in tribal court (law trained): Jill E. Tompkins.⁴¹

1989 First Penobscot woman admitted to the Bar: Jill E. Tompkins.⁴⁰

individual parents and families, Neumann said, but it's also good business. Neumann cited the fact that when Bernstein Shur unveiled a 16-week paid parental leave program available to *all* employees a few years ago, it accompanied the announcement with a press release. "I love that they understood how valuable that is in terms of marketing, to provide parents with equal leave. I think the fact that they marketed their generous policy the way they did was a real statement and recognition about its importance, and they deserve credit for that." Her own firm recently made a push to increase its family leave policy and formally expand it to 15 weeks for both men and women, recognizing the importance of such policies to effective recruitment and retention of all lawyers, and particularly women lawyers.

Neumann has also made it a priority to educate her colleagues whenever possible about the realities of being a working mother – and has found in them a very receptive audience. For example, Neumann explained to male colleagues that interviewees who are new mothers might need to have time and space in their interview schedule to pump breastmilk. Likewise, she ensured that nursing mothers have locks installed on their doors to provide privacy. "They don't know what they don't know," she said of her male counterparts. "But they want to know."

Drew said she sees that structural changes are resulting in cultural ones. For example, a program called Women at WEX has allowed a new generation of mothers to swap stories, tips, and support. "I think that's really cathartic and helpful for them to talk about, how do you progress your career and continue to care for your family? And, you know, do you need

a nanny? I think having those discussions in the workplace is really important."

In the nearly one hundred and fifty years since Nash had her first child, women attorneys in Maine have, one by one, found their own paths. Each one who "makes it work" in her own way has provided a role model and inspiration for those behind her – inevitably creating a slow but surging pace of change. Drew recounted a recent Board meeting where a board member, an executive at a Fortune 500 company, participated from her car because she was dropping her kids off at school. She says WEX's other Board members treated the event as business as usual. "How awesome is that?" said Drew. "Fantastic."

Supportive Networks

Having the support of colleagues in the bar can be critical to the advancement of women. For example, Nash was sworn into the Maine Bar after a cadre of local male attorneys spoke in support of her admission. That support made her career possible, just as the support experienced by contemporary lawyers helps them persevere.

Eee points to the support she received from her colleagues at Pine Tree Legal, as well as from other attorneys in the Bar, as helping her get through the first years of her career. "There were not a lot of resources for young lawyers at all, much less a young woman lawyer, and I just felt discounted for a while," she said. "Thank God for some of the supports that I had." Others, like Mitchell, did not have those supports within the legal community. "Unfortunately, I think women expect to go through this," she said. "I didn't feel supported."

2001 First woman Chief Justice of Maine Supreme Judicial Court: Hon. Leigh I. Saufley.⁴³

1997 First woman Passamaquoddy admitted to the bar: Tina M. Farrenkopf.⁴²

2001 First woman to serve as U.S. Attorney (interim): Paula Silsby⁴⁴

Some attorneys found support from their employers. When male opposing counsels told Saufley that they would prefer talking to one of her male colleagues, she asked her boss, the Attorney General, what he wanted her to do. "His response was ... let's just put it this way: *very* clear," she said. Following his advice, she developed a routine retort to such questions: "I am the attorney on the case and you have reached the right person -- and there is no other attorney who is going to talk to you about this." Saufley recalls, "I had the complete support of the office."

Kyle points to the supportive prodding of her mentor as helping her make a name for herself. "She used to always tell me 'Ashleigh, you have to sit closer to the front, you're always sitting in the back,'" said Kyle. "That's my natural way, but she was always saying the same thing: You have got to sit up front."

Both informal and formal mentorships like the one Kyle experienced have helped shape women's careers. Beverly's career was impacted greatly by the mentor relationship she formed when Maine Law's Women's Law Association paired her with Leslie Silverstein. "She's one of my best friends now," said Beverly. "She is the person who got me started on my first asylum case, which was her first pro bono case at ILAP." Both women have now served on the board of the Immigrant Legal Advocacy Project.

Having a supportive network of women attorneys has been a positive experience for many. "My conversations with women have been overwhelmingly positive. I don't believe I have had any conversations with female lawyers from other firms or

other larger firms that have ever been anything but respectful," Beverly said. "I've loved that."

Making Room: Women Attorneys Share Advice for the Next 150 Years

The challenges faced by Nash and the women who followed her made them strong, resilient, and determined to make the legal profession better for the women attorneys still to come.

"We have to be self-reflective as a gender and make time and make room," Eee said. "It was hard enough for me, and people who came before me had it even harder. We should be doing all we can to make room, particularly for newer, younger women attorneys. If we cannot make time, we should at least be making room."

Making room for women includes nurturing trial lawyers. "Firms just have to be willing to nurture women, and push them out of the second chair and push them into the first chair," said Murphy. And, women who are given the chance must learn to overcome barriers of perception. "The women that I know that are really successful in court just seem completely unselfconscious," she said. "You listen to them talk and you realize you're listening to someone with a heart and a soul and a mind and you don't even see their physicality because they're usually so dynamic and so powerful and so convincing."

"A lot of it is getting comfortable in your own skin, knowing that whatever is coming at you is not about you it's about where it's coming from," added Saufley.

2009 First woman attorney general: Janet Mills.⁴⁵

2021 First permanent U.S. Attorney: Darcie McElwee.⁴⁷

2013 First Maine-born Wabanaki woman to practice law in Maine: Sherri Mitchell.⁴⁶

Eee echoed that sentiment, noting that sometimes, “even if you do everything right, there can be a feeling that you have done something wrong.” To overcome that in one of her first cases, Eee channeled the anger she felt about what had happened to her client and the child that was involved. “It was easy for me to advocate for our position. Even if you may be perceived as overzealous when you are a brand-new attorney, you may have to prove yourself,” she said.

“At some point, you have to forget about what you look like and what you sound like, and hope that the jury or whoever is deciding the case, is going to base their decision on the facts and the law, and that they’re going to forgive you for your imperfection,” Murphy said.

And of course, as a practical matter, just like Saufley and Eee did early in their careers, women attorneys must be prepared to handle sexism when it comes and have responses to sexist comments at the ready.

“Have a core set of five or six things that you say every time consistently, your ready responses,” said Eee. “I hate to make somebody be on guard like that. But I tell you, it is a lot easier to combat bullying or harassment when you have a set of ready responses.”

But there is reason to hope that those ready responses will become less and less necessary in coming years, as attorneys continue to advocate and achieve diversity in the profession.

“It becomes infectious,” Drew said. “We’re understanding that diversity is really important.”

“Recently there’s just been an awakening,” Okere noted. “People are talking about racial equity issues a lot more. I think that is great. And it is very earnest, and authentic.”

Those earnest conversations have paved the way for Maine’s women attorneys to identify the changes they want to see in the profession and to develop ways to effectuate those changes.

“We need to get better at thinking about how we help younger women achieve and grow in leadership,” shared Drew. “And we have to get better at helping young women understand what that means.”

As women attorneys reflect on the challenges they still face and the changes they wish to see in Maine’s legal community, there is also time to acknowledge the achievements made since the days of Nash.

“The wonderful thing about the Maine bar is that we are constantly trying to get better,” Saufley said. She also praised

the Maine Bar and the integrity of the attorneys that are part of it. “I think the Maine bar is the best in the country, and I say that having had an opportunity to work with Chief Justices across the country and hear the kinds of things they had to grapple with.”

“There is definitely a regional difference,” Kyle said. “And I have to give Maine a thumbs up on that.”

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Ten Tips on Time and Productivity

As Abraham Lincoln famously said, “the leading rule for the lawyer ... is diligence. Leave nothing for tomorrow which can be done today.” Most lawyers would never sleep heeding such advice. But the drastic changes of the last year may have some of us struggling to maintain the level of diligence necessary for setting and achieving new goals. Here are ten tips mindful of the value and use of time.

1. Limit social media.

Have an allotted time for personal social media. It is all too easy to be sucked into a rabbit hole of updates, announcements, and cat videos. My limit is 10 minutes before work to send birthday wishes and scroll my newsfeed. Keep newsfeeds uncluttered by “unfollowing” duplicative pages to focus on more meaningful connections. Periodically review and “unsubscribe” to mailing lists, blogs, and groups that are redundant or no longer relevant. Consider even deleting social media apps from the devices you have around you at work to remove the temptation.

2. Limit television.

Set time limits or rules to manage your screen routine. Try not to spend too much time watching things you have already seen. True, re-watching our favorite sitcoms and movies, when we already know the outcome and how it is going to make us feel, can be good for the soul. But much of what we watch provides only minimal value as compared to the investment of time.

3. Multitask.

If you do watch those re-runs, you can keep them in the background while you clean, cook, edit, or exercise. When faced with a task that requires focus, multitasking may prove a distraction. But, if you are simply wasting time, do something else while you're at it to maximize the value of your time. During quarantine, I re-watched *Friends* episodes in Spanish. Because I know the plot and the dialogue by heart, I know the English translations, brushing up on my Spanish skills while having a good laugh and a sense of nostalgia.

4. Designate a productivity hour each day.

Different people have different “peak performance” times. Whether you are a morning person or a night owl, schedule an hour each day to work on a project or a goal. If you maintain a designated time to focus, daily productivity will become second nature.

5. Ask for help.

Too often, high performing leaders run the risk of doing everything ourselves so that it is “done right.” This “Go it Alone” mentality is not a sustainable model for wellness or success. Asking for help when needed can improve relationships among spouses, families, partners, and co-workers. Sharing responsibilities at work and at home can foster healthy environments of cooperation and productivity.

The drastic changes of the last year may have some of us struggling to maintain the level of diligence necessary for setting and achieving new goals.

Time is a valuable commodity. As we begin to emerge from a year of isolation and uncertainty, a mindfulness of time utilization can promote productivity as well as personal and professional growth. Make the most out of every minute of every day – whatever “most” means to you.

6. Pay for certain services.

Identify, from a time/cost/value/happiness analysis, what tasks you should delegate. Handling everything on your own may save money and allow you to maintain control; however, if you can afford to hire assistance with those things you really dread, you can use the extra time to focus on being productive.

Investing in the cost of delegating tasks that you either really do not care for, or that someone else can do more efficiently (such as building your website), allows you to redirect your mental energy into something that not only you prefer to do, but that also is more valuable to you.

7. Ready to go meals.

To avoid unnecessary spending on prepared meals, most of which are unhealthy convenience food, and spending money to save time, consider setting aside time once a week to prepare make-ahead meals. There are many “meal-in-a-box” delivery companies that became popular during the pandemic. These might be helpful if you are extremely busy or if you live in an area without easy access to daily fresh food. But, if you can put together a “meal kit” on your own, you achieve the same benefit for less money.

8. Combine business with pleasure.

Multitasking applies to relationships too. Be mindful of people you can visit while traveling. When a business opportunity brought me to Chicago, I reached out to friends in the area who met me for a glass of wine. It was the highlight of the trip. When I travel to various courts throughout the state, I see if a friend in that area can have lunch. Keeping your friends top of mind will result in opportunities for connection scattered amongst a busy schedule that would not otherwise allow for much socializing.

9. Blend your friends.

It can be fun when your work friends are introduced to your lifelong friends, or when your high school friends get to know your college or law school friends. Think about what group of friends would mix well with another group. As we return to a world without Covid-19 restrictions, consider hosting events that will bring your friends together. You may not have to divide your Saturdays among different social settings.

10. Audio Books.

Barack Obama’s memoir is over 700 pages, making it a good pick for a listen rather than a read. When traveling, listen to audio books for entertainment, or to increase your knowledge in your profession, add skills, gain new perspectives, or learn a new language. The subject matter is limitless, and listening frees your hands and eyes for other tasks.

Time is a valuable commodity. As we begin to emerge from a year of isolation and uncertainty, a mindfulness of time utilization can promote productivity as well as personal and professional growth. Make the most out of every minute of every day – whatever “most” means to you.

ENDNOTES

1 This article first appeared in the Spring 2021 edition of WILLED, a quarterly publication by the American Legal & Financial Network (ALFN). WILL is an ALFN subcommittee for Women in Legal Leadership, of which Sonia is a member.





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People Like to Do Business with People: Digital Networking and Community Building

It was 2019. Although already on LinkedIn for close to 10 years, to that point I still treated the platform as a glorified online resume. But I saw more and more people sharing updates about their professional lives on the platform: invitations to upcoming in-person seminars (remember those?), professional accolades, and even a few case developments when a breaking decision came out. I decided to dip my toe in the water.

Six months later, we all sat in our homes bewildered and a bit anxious at the rampant spread of a highly contagious disease across the globe. In-person networking was out for the foreseeable future. Like many others, I dove into LinkedIn. In the last 18 months, I have been nothing short of amazed. Through the rest of this article, I share my reflections on making the most of professional social media and digital platforms for business and professional development.

The Most Surprising Aspect of Digital Networking and Community Building

We talk about digital networking, but in my experience, good professional social media is more about building community than building a network. A true community has variety. We learn from one another. Building community on social media, unlike in person, no longer depends on you being present in the same room, at the same time, as someone with whom you are trying to build a relationship. Without a doubt this is the most surprising aspect of professional social media: the depth of the relationships that you can form in a virtual context. We are talking genuine connections with colleagues, peers, and prospective clients. Connections become friends, confidants, and colleagues. I see it every day on LinkedIn, and it never ceases to amaze me. It is community building—netweaving—at its best.

When most people think of networking, they are focused on themselves—how can I build *my* network? Who do I need to meet here to expand *my* opportunities. Netweaving flips this concept on its head and focuses on the service that you can provide to others. How can you help someone in your network expand her own network? Who do you know that would be a good connection for someone else?

Let me give you an example. I recently touched base with a former supervisor who is now based out on the West Coast. While chatting, it occurred to me that two other women in my network may be great connections for her. All three were lawmoms. All three were in the Bay Area. All three had online publications as a common factor. Asking this former supervisor if she would like an introduction, I set up a group chat thread on LinkedIn and made the connection.

What was in it for me? Nothing. So why do it?

I believe strongly in building community. The stronger the connections, the stronger the network of support that we can build around one another.

In a conversation between the author Glennon Doyle and the actress-activist Tracy Ellis Ross broadcast as part of the Forbes Strong Women Summit 2020, Ms. Ellis Ross shared this reflection. She loved to be surrounded by a community of other women made up of all ages and experience levels. The women who had more experience served as inspiration to work harder, reach higher, dream bigger. They also served as support, allowing others to build the skills necessary to reach those big dream goals by sharing their experiences. The women with less experience were there to be mentored, benefitting from those who paved the way. The entire community uplifted and

empowered one another. That is netweaving at its best.

Netweaving is not entirely altruistic. The best source of business for any lawyer is word-of-mouth. Just as a happy client will refer you to others so will a close connection who trusts in you. Building a strong community ensures that you create your own referral network of people who will think of you when they need an attorney in your practice area.

Digital Networking is Generous

Thinking of digital networking more as community building underscores another aspect of professional social media that takes so many people by surprise. The community is *generous*. Generous with their content creation. Generous with their networks (netweaving successfully depends on it). Generous with their time, connecting offline with others or answering questions about their posts. At the risk of using words associated with political drama, the name of the professional social media game is reciprocity. Get to know people not just for what they can do for you, but because they are interesting and can enrich your life. Give professionally. Teach. Write. Offer to make introductions within your network. In other words, show up to serve rather than thinking only about what you can get.

Digital Networking is Easy

I make digital networking sound so transactional. Write post. Like post. Add comment. Click connect.

In reality, building this digital community is far easier done than in person networking. Gone are the days of trying to apologize for cold hands or sweaty palms. Heck, gone are the days of trying to measure each other's worth on the strength of a handshake at all. Building digital community starts with



a conversation—a post and a comment. From that conversation comes a connection (as “friending” is known on LinkedIn). It’s as easy as the click of a button.

Digital Networking is Effective

Where in-person networking is limited to those people you meet in person, digital networking has no such limitations. Through digital community, our outreach can spread much farther at a touch of our fingertips. The strength of that community not only builds brands, it builds powerful business, and it also empowers advocacy.

In many ways, digital networking is the great equalizer. In person networking, pre-pandemic, often took place over breakfast or happy hour. In other words, for parents, the childcare problem hours. Parents were forced to either skip out on valuable networking, or make complicated child care arrangements. Building a digital community requires none of this. You engage in your own time. You put in the time you are able to devote. You and I do not need to be on the platform at the same time to have a conversation and forge a relationship. A platform that allows all to effectively engage on their own terms is powerful.

Be Yourself

One thing that does not change, regardless of medium or format, is that people like to do business with people. People like to know *who* they do business with, not just that they are doing business with someone competent. Social networking platforms are an ideal opportunity to showcase what you know and what you are passionate about. Pursuing digital networking works best when you simply be yourself.

You have 1300 characters and the wily ways of the LinkedIn algorithm to create content that captures attention. There is just enough space to give facts, analysis, and imbue it with your personality. Use it to your advantage! One of the best bits of writing advice ever given to me, by my colleague Peter Brann was to write the way you speak. Using professional social media like LinkedIn is a prime opportunity for lawyers (especially newer or coming back to the profession from time away) to step out from under any one’s shadow, to find and hone their professional voice, and to showcase yourself as a lawyer worth hiring. Trust yourself. Remember that people like to do business with people, and when you trust yourself your target audience is more likely to love it.



If your natural tendency is to be goofy, be goofy! I'm a former Broadway Baby turned lawyer who really appreciates corny jokes and dry wit. I make a point to infuse my posts with that sense of humor to get the community laughing and engaging. Often that shows up as admittedly awesomely bad parodies of song lyrics. The corny lyrics make people chuckle, get interested in why I am comparing taxes to The Beatles and respond. In other words, I got them hooked.

Think about this: the personal *is* the professional. Now, I am not saying start posting all your cat videos on LinkedIn (although a certain Zoom Cat filter failure video *did* make its rounds among lawyers on the platform). What I am saying is that you should not hesitate to share the aspects of your life that go beyond just your daily practice area as a lawyer. For example, I post on three topics. The majority of my posts relate to tax law (my area of specialty). I start every week with a reflection on gratitude to start my work week with a positive mindset. On Wednesdays, I share reflections on and advocate for lawmoms and women lawyers. Having this type of structure allows me to focus on my content creation and make quick work of it. It also allows my community to build a picture of me as a complete person. When they reach out to

me for business, or to make a client referral, they know with whom they are dealing

Be Consistent

I've mentioned this idea of an "algorithm" several times. Every single social media platform runs on an algorithm, which selects what content is shared and how widely. One factor that heavily influences the algorithm is consistency. Posting on a regular and frequent basis enables lawyers to use the algorithm to their advantage, giving their content the best chance of a broad audience.

It is also important to be consistent in your messaging. You will forge stronger bonds with your community, based on trust and shared interests, with consistent messaging. The aim of well-done professional social media is that you are building your personal brand. Do you want your personal brand to be "scattershot", the digital equivalent of flinging spaghetti at a wall and hoping it sticks? No. Your digital content, both your own posts and your comments on other people's posts, should reflect those areas you focus on in your practice and those aspects of your life that you are passionate about.



Curated Content

Professional social media presents curated content in a readily digestible format.¹ When done well, lawyers and other professionals share their knowledge. We post to educate, and to spark conversation with our target audience to pique their interest in us as lawyers. There is an incentive to demonstrate that you are on top of the latest trends and developments in your industry.

I frequently learn of developments in SALT (State and Local Tax) through my network of other SALT professionals. Their content allows me to continue to master my own practice area. Not only are you in the prime seat for updates within your own practice area, you are able to see what non-lawyers think about the world in some interesting ways, and translate that to your law practice. It is for this exact reason that I follow many of my clients, so that I am able to learn of interesting developments in their businesses, and more importantly—learn what is important to them. It also helps me learn about other areas in law, or developments in the legal industry (for example, such as new studies about the experiences of women lawyers published by the ABA Commission on Women).



For example, a client shared that the company received a prominent recognition as an up and coming retailer. It was a client I had not worked with in a few months, and so I used the award as an opportunity to reach out with a word of congratulations. No business pitch. No ask for work. Just a simple “Congratulations” rekindling a client relationship in an organic way.

The Long Game

It should come as no surprise that even among professionals, the use of social media is on an exponential rise.² As law firm management software vendor, Clio, puts it, “It’s time for you to capitalize on this by investing in your social presence!” Admittedly, using professional social media is not an overnight strategy to instant success. As with any business development, using it as a tool takes time. This is for a variety of reasons, reflecting that digital networking is part art, part science.

Social media algorithms favor those who have a larger following. Building a genuine following takes time. We need to dispel the notion that to build a digital network, you connect only with those people whom you already know or that you have already met. Think of LinkedIn like the happy hour during the Muskie Dinner. Would you only network with those people you already know? No! While you may gravitate toward your existing colleagues for part of the night, to exclusively do so defeats the purpose of networking. Building your network on LinkedIn is the same.

Connections fall into three categories. First and most obvious, clients and prospective clients. Second, referral partners. I see referral partners often as lawyers who may be seen as competitors, practicing in the same or related practice areas, perhaps in other states. These are lawyers you may need in your virtual rolodex if you are conflicted out of serving a particular client and would like to refer them to someone you trust. Perhaps you need local counsel for a matter pursued out of state. Don’t we all prefer to engage local counsel who has experience in our practice area, who can help us navigate the local rules smoothly? You can also think of them as lawyers who practice in other areas but serve similar clients. These are attorneys we hope will refer work our way when their clients are in need. Third, supporting peers. These are attorneys and other professionals who can be your broadcasters, helping boost your content on the platform. Do not be surprised if there is quite a bit of overlap between these latter two categories.

Yes, one strategy could be to accept any and all connection requests—regardless of whether you know the person and

regardless of whether you think they would fall within one of those three categories. Doing so would certainly allow you to amass a following large enough to start boosting your performance with the algorithm. On the other hand, this strategy does not forge the strong community that, in the end, will drive the business side of networking.

Of course, while engagement is important, so are lurkers—those professionals who view posts but do not engage. No likes. No comments. No outward indication that they have absorbed your content. They are there to listen and learn.³ As it happens, the lurkers are often ones to reach out with direct inquiries for work or professional opportunities.

Professional Opportunities Await

Of course, the be-all, end-all benefit of professional social media is to bring in business. However, professional social media can also be used as a tool to identify other professional opportunities that themselves may drive business. How many times have you thought to yourself, “How the heck do I get this awesome article I just wrote into XYZ trade publication?” I know I certainly did before LinkedIn. Once again this is where building a robust community reaps immeasurable rewards. Your community may consist of podcast hosts, publishers, event managers for industry CLE organizations, and others. Once you have built a rapport with those connections (by doing such things as engaging with *their* content), do not hesitate to start proactively seeking out opportunity to offer yourself as a featured guest or author.

For example, I enjoy the ABA Podcast “People in Tax.” After listening to several episodes, I connected with the host on LinkedIn, leaving him a note about how much I enjoyed the podcast. When he asked for topic recommendations, I suggested he highlight more state and local tax professionals, and I was thrilled when he immediately responded back asking if I wanted to be his first SALT guest. Through my use of LinkedIn, I’ve secured opportunities to write for other legal blogs (Above the Law), contributed to a best-selling book (#Networked—about the power of women supporting women in digital communities), been a featured guest on dozens of different podcasts and webinars, and had the opportunity to develop a new webinar series—Women in Tax for Women in Business—with other exceptional women tax professionals I met on the platform.

Let me close with this. Professional social media is what you make of it. You get out what you put in. In a world that is digitally dependent, however, digital networking and

community building is an opportunity to reimagine how you pursue your practice in that environment.

Embrace it.

ENDNOTES

1 I have focused this article on LinkedIn, the platform I use most. Lawyers do, however, use other social media platforms as well, including Facebook, Instagram, TicToc, and Clubhouse. The platform you use may reflect the clientele you work with. If your practice area is something dependent on individuals – family law, criminal defense, personal injury – consider exploring the platform your target client is more likely to use. My clients, businesses and their officers, are on LinkedIn, so that is where I am.

2 <https://www.clio.com/blog/10-linkedin-profile-tips-for-lawyers/>

3 <https://www.lawpracticetoday.org/article/linkedin-reluctant-lawyer-part/>



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DANIEL J. MURPHY is a shareholder in Bernstein Shur's Business Law and Litigation Practice Groups, where his practice concentrates on business and commercial litigation matters.

BEYOND THE LAW: JORDAN PAYNE HAY



Noting that the ancient Greek roots of the word “theater” means “seeing place,” Stella Adler, the great acting teacher, described the theater as an important place where individuals can obtain a glimpse of life’s truths and an understanding about the social situation. The theater indeed not only provides a reflection of life for its audience, but also creates a sort of temporary family for the performers and crew members as they bring theatrical works to life. Jordan Payne Hay has a foot planted in both camps, maintaining a long-standing love of musical theater as a spectator and a more active role acting in local theatrical productions. She recently met with the *Maine Bar Journal* to discuss her interests.

Please tell our readers about your interest in community theater.

I have always enjoyed singing and performing! My interest in community theater began when I started going to shows and singing in children’s choirs in Kansas City, where I’m from. Now, I am proud to call L/A’s Community Little Theater in Auburn my community theater “home.” I love how community theater brings people together from all walks of life who love singing, dancing or the theater generally and put on a show for the love of performing.

**Are the productions staffed by volunteers?**

I think every theater is a little bit different. At the Community Little Theater, I believe there is a small stipend for a director and choreographer, the folks who do a ton of work and essentially have a second job. But for the actors and people who do lighting and stage work, it is all volunteer. It is all for the love of the theater.

What are the roots of your interest in theater?

I can't really recall when I first began singing and performing, but my parents would probably say it started early! I have an early memory of singing in synagogue in choir. I must have loved it, and the rest is history!

So, did you appear in many high school productions?

I did. I did shows all throughout high school. They were a truly fun experience and gave me so much joy. I did sports in high school and theater got me involved with a different group of people, which I really loved as well. I carried that joy and passion through to college, at Bowdoin. My best friend and I started a musical theater club at Bowdoin. We put on three musicals while we were in college, including *Hair* and the *25th Annual Putnam County Spelling Bee*, which, to this day, is one of my favorite musicals. Also, my best friend and I directed and starred in the musicals because we were (are) both divas and gluttons for punishment.

How was the reaction to the shows?

We were pleasantly surprised that our fledgling musical theater club's shows were very well received! I recall one of the coolest things that happened when we ran the group was that some guys who only did sports tried out for the shows and ended up being incredibly talented. One guy was a football player, and he had the support of the whole team, who came out to the shows. He had great comedic timing, and he was the lead in one of our shows! That was such a fun (and exhausting) time in my life.

How did you first become involved with the Community Little Theater in Auburn?

I think I just Googled it and reached out to someone to see if I could audition for productions. I am so glad I did, because I love the CLT community in L/A.

I imagine that with COVID, there was a break in productions. Have they started up again?

Yes, but things are getting back to normal slowly! There is a Beatles show coming up called, *Let It Be*, in January, which is going to be so great. I can't wait to go. I also can't wait to audition for another show, and maybe even convince my son (who is 2) to come out, as well!



What is it about community theater that gives you joy?

I love that it is such a departure from what I am doing in my normal life. It's not like you can break into song and dance in the middle of a normal legal conversation – most of the time, anyway! But that is what musicals are. That is why they are so magical. I also get to meet cool new people that I typically would not have met before. It is a bit cliché, but community theater really “fills my cup.” I love the singing, the dancing, the acting, and the expression of the arts. I have been attracted to it my whole life. It’s “me!”

One thing that's striking about community theater is that it truly is a shared enterprise. All of these individuals with different backgrounds and interests come together and create a unified work. It is quite remarkable.

It is! It is a 100-percent group effort. You get really close to the entire cast and crew because you know you are relying on them, and they are relying on you. It is almost like summer camp.

Have you encountered any challenges in community theater?

Certainly, the time commitment can be a challenge. While a production is going, it is not a typical nine-to-five lifestyle. However, because it is different from my regular schedule, it is almost like my brain taps into a different place. I am not as tired as if I had put in a regular 8 a.m. to 8 p.m. day.

However, during a production, I definitely am stretching my time as much as it can be stretched.

Why does community theater matter in our society?

I think community theater matters for people who see the show and those who put it on. The audience can escape to a new place, take a vacation, learn something new; they can come in from the cold and find themselves on *Avenue Q*, or on a Greek island in *Mamma Mia*. Community theater is such a source of unfettered joy that is otherwise hard to come by in this day and age. As a performer, the shows provide an amazing sense of community, and of being involved in something bigger than yourself. I would like to think that participating makes me a better person to be around in my regular life; a better person to work with, a better person to be married to, and a better person in general.

What is the best advice you've ever received?

The one piece of advice that sticks out is something that my mom always says, and up until five or so years ago, I'd roll my eyes. But, of course, she's right. She always says, “SPIN IT,” which is basically her way of saying “when one door closes, another door opens.” If you have a failure, spin it around and turn it into a blessing. I try to use that advice in my life to move on from negativity or try to see the silver lining. To me, “spin it,” also means that if negative things are coming at you, you just spin them away.

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BEYOND THE LAW features conversations with Maine lawyers who pursue unique interests or pastimes. Readers are invited to suggest candidates for Beyond The Law by contacting Dan Murphy at dmurphy@bernsteinshur.com.





MICHELLE GIARD DRAEGER is the Executive Director of the Maine Justice Foundation as of May 2020. A native of Maine, much of Michelle's career has been spent in public service including Pine Tree Legal Assistance, the U.S. Securities and Exchange Commission in Washington DC and Boston, and serving as an Assistant United States Attorney for the District of Maine. She may be reached at mdraeger@justicemaine.org.

The Immigrant's Journey is Long and the Path to Citizenship is Nearly Impassible

Border agents on horseback run down Haitian immigrants in the Rio Grande. Detainees huddle in filthy conditions under a Texas bridge. Afghans desperate to flee Kabul sit knee-to-knee on the floor of a military cargo plane. Any discussion of immigration can recall these troubling images we saw last summer and the stories of devastated lives that so often accompany them.

Equally valuable is to look beyond the pictures and into the goals of our federal immigration system, how well it is working, and the role of the Maine Bar in providing legal aid to those seeking a new life in Maine.

Maine has about 48,000 foreign-born residents, a little less than 4 percent of the population, according to 2019 census data. Many immigrants arriving in Maine are refugees.

There are many pathways for immigrants to enter the U.S., but most of the immigrants in need of legal aid are refugees. UNHCR, the United Nations Refugee Agency, states that there are globally over 26.4 million refugees.

Chris Myers Asch of Hallowell co-founded the Capital Area New Mainers Project (CANMP) in 2017 to welcome and serve immigrants arriving there. "We primarily work with refugees," Myers Asch says. "The ones we work with are the lucky ones. They made it through. For those coming through the refugee process, it starts abroad with the United Nations. There are interviews and constant vetting, and then they are approved. They come to the U.S. and are placed with a resettlement agency."

Refugees arrive with a clear path to citizenship; they can apply for a green card after one year and for citizenship four years after that. Catholic Charities Maine is the state's refugee

resettlement agency. The number of refugees arriving in Maine can vary widely from year to year, but the trend has been downward, according to Hannah DeAngelis, Director of the agency's Refugee and Immigration Services. In 2016, 650 refugees arrived in Maine. By 2020, the federal government's last complete fiscal year, the number had dropped to 47.

Hasan Alkhafaji and his family are some of the lucky ones. Alkhafaji helped found CAMNP with Myers Asch. A native of Iraq, he worked over the course of five years for different U.S. agencies, including the embassy in Baghdad. But as the security situation worsened, he felt he had no choice but to leave Iraq. "The more you worked with the U.S. and in the Green Zone, the riskier it got," he says.

In 2009, Alkhafaji applied for a Special Immigrant Visa (SIV). The SIV program was originally designed for interpreters who had worked for the U.S. military in Afghanistan and Iraq. It was later widened to include more employees, including those who worked for contractors as well as the military. Five years after applying, he and his wife and children arrived at the Portland airport. Catholic Charities picked the family up at the airport and settled them in Augusta. They did have the choice of where to go, unlike other refugee programs. His only connection to Augusta was a friend who had moved there six months earlier.

"I had no relatives here, no knowledge of what it was like," Alkhafaji says. "It's scary because you have no idea what to expect."

Migrants who cross into U.S. without United Nations-approved refugee status fall into the category of asylum seekers. The five grounds on which an applicant may be admitted to the United States for asylum are political opinion,

race, religion, nationality, or membership in a particular social group. Most asylum seekers need legal aid. In recent years, the Immigrant Legal Advocacy Project (ILAP) estimates there have been as many as 6,000 asylum seekers resident in Maine and approximately 95 percent of ILAP's clients are people of color.

Professor Anna R. Welch of the University of Maine School of Law oversees the school's Refugee and Human Rights Clinic and teaches the Immigration Law Seminar. Prof. Welch offered her thoughts on how well the current system is fulfilling the overall goals of U.S. immigration policy.

"The goals we have in mind make sense, but the system doesn't support them. From an economic standpoint, you want to focus on immigrants that can fill your workforce. A lot of our immigrants are professionals in their home countries, or with advanced degrees, and come here ready to work. Why wouldn't we want that in our country and state? We want the best and the brightest to come here. One would think that we would want to harness that to power our economy. Instead, our immigration system limits the number that can come in through the employment pathways, and the quotas are a mismatch with what our economy needs. That's one [area] that is really broken and doesn't meet our goals," Welch says.

Reza Jalali, Executive Director of the Greater Portland Immigrant Welcome Center, told us the same thing earlier this year: "Today's immigrants are highly educated and multi-lingual, and that is exactly what Maine needs. We are an aging state, and immigration brings young, motivated, skilled people here."

Then there is the goal of welcoming refugees and those who seek asylum. "The Statue of Liberty symbolizes what our ideals are, but that is something of a myth," Anna Welch says.

The Trump Administration took a number of measures to limit immigration, such as lowering the number of refugees admitted annually to 15,000. After intense pressure, President Biden increased the number, initially to 62,500, then again to 125,000. In March 2020, the Trump Administration invoked a little-known public health provision of U.S. law, Title 42 (42 U.S.C. § 265), to immediately expel immigrants crossing from countries with communicable disease outbreaks. Unaccompanied minors and some families have been exempted. Through the pandemic, the Biden Administration has continued this policy.

Family reunification is another overarching goal of U.S. immigration policy. According to Welch, "We have pathways for certain people to come to the U.S. if they have family here, but there is a quota on reunification numbers. Applicants might wait five or ten years. It's limited by the western view of a family

or immediate family—typically children, parents, spouse, siblings, and that's it. What if you are being raised by an aunt or uncle or a grandparent?"

Part of the reason these goals are not being met, practitioners and policy advocates agree, is that the immigration courts have long been under-resourced. COVID-19 brought this broken system to brink of shutdown.

"The biggest impact of the COVID pandemic was that it happened during the Trump administration," says Sue Roche, Executive ILAP, the state's largest provider of legal aid for refugees and asylum seekers. "The system was already flawed and backlogged. Consulates were closed [due to COVID], and so any family reunification was delayed. Employment-based cases also came to a screeching halt. Our client base was really hit by the disease itself and by the economic impacts and layoffs. They couldn't get the relief offered to other Americans," says Roche.

At the Refugee and Human Rights Clinic, Anna Welch says of the pandemic era, "Now the backlogs that our clients face are even worse. The cases are now years further away from final disposition. The backlog nationally is now at 1.3 million cases as of June 2021. So much for due process. The average wait is about 2.5 years for any case in immigration court, and even longer for asylum cases. Five, six or seven years are what the clinic's clients are facing. Some have gotten work permits and had children here in that time," according to Welch.

"I don't think most Americans appreciate the hurdles refugees face and the amount of vetting they go through, how long it takes, how unforgiving it is," Chris Myers Asch says. "People who make one mistake on one piece of paper can find themselves shut out. It can take years and years to rectify it."

According to many advocates, the courts have been starved of resources for many years. There are not enough judges, clerks, or translators. Immigration enforcement is under the executive branch, so some of the appointments are politically motivated. Policies and regulations shift constantly. Julia Brown, Advocacy and Outreach Director at ILAP, says, "Immigrant families are constantly checking the news to see if they will be reunited with or separated from their families. These policies can change on a whim. It's very hard to talk to clients and the community and give them any reassurance that the change is permanent." Changes via executive order can make getting a green card easier or more difficult, but only Congress can expand who has access to permanent status.

Brown says, "We are incredibly lucky to have a large pro bono asylum panel who take cases. The Immigration Bar in Maine is a very collegial bunch of people and very generous of their time and expertise. For example, when we had a large number of

families seeking asylum arrive at the Portland Expo in the summer of 2019, the Immigration Bar jumped at the chance to help.”

After the fall of Kabul to the Taliban, Anna Welch sent out a call for volunteers for a substantial project that the clinic and ILAP created to handle the influx of refugees expected to come from Afghanistan. The response was strong. “Within two hours of sending out my request for help, I had 30 students respond and ten clinic alums as well.”

Pro bono and low-cost representation are essential elements of immigration law. Attorney Jenny Beverly works exclusively on asylum cases. Beverly is a Maine Law graduate (and now ILAP Board member) who was in Prof. Welch’s first RHR Clinic class. After graduation, she worked with a local attorney who allowed her to focus on asylum cases, then opened her own practice in Portland. She offers low-cost representation and payment plans and serves mainly asylum applicants from African nations. Beverly says, “No asylum seeker could afford to pay an attorney hourly to do this work.”

There is not enough funding for immigration authorities to complete applicant interviews in a timely way, and attorney Beverly has first-hand experience with the backlog of cases. “I have one case from 2014 that has yet to go to interview.”

One client had an interview rescheduled four times in a year due to lack of a competent translator. Says Beverly, “That’s very important. We got to the asylum office, and sometimes they let our interpreter in; for Kirundi speakers they do [because Kirundi is not on the list of languages for which the immigration court provides interpreters] but Lingala they don’t.”

It is difficult to find professional interpreters who will be available every time clients need to speak with their attorneys. Usually, the clients will come with someone they know from the community or a family member to act as a translator. Often clients use dialects or local languages. Linguistic nuances can be critical, such as whether the client suffered harm from “civilians” as opposed to “men in plainclothes.” That could make all the difference in a political opinion case.

There are other options in the immigration system to ease the backlog. Nadine Twagirayezu has been an asylum paralegal at ILAP since 2016. “I went to law school in my home country and have always wanted to work in a legal field. I was recently accredited to take on cases on my own and provide full representation.” Twagirayezu works with clients from all over the world, including the Democratic Republic of Congo, Rwanda, Burundi, Angola, west African nations, as well as Latin America.

As a Department of Justice accredited representative, Twagirayezu can represent clients as a non-lawyer. “An accredited representative is a person who is proven to have enough education and experience in immigration law and has been given permission by the DOJ to provide immigration legal services and to fully represent clients in immigration law.” She is partially accredited and so can represent clients before U.S. Citizenship and Immigration Service but not in immigration courts. She plans to apply for full accreditation as well. “You learn by doing under an attorney’s supervision and with lots of webinars. When you are an accredited representative, you can work with a client from the start to the end and be the primary advocate for that client or family. It feels good to be able to do more for the clients.”

The challenges and tragedies of refugee families are to some degree permanent features of the system. Says Myers Asch, “It’s always a crisis when you are dealing with refugees. They are leaving their countries for a reason. There is political pressure. The [U.S.] laws are always changing. That’s a difficult way to make decisions and to oversee a smooth process. It’s not a recipe for success.”

Attorney Beverly agrees that the system is under-resourced and underscores another point: “I don’t want to say at the end of the day that it’s just funding, but that’s a big part of it. These decisions are discretionary. It is just such a hard thing to adjudicate. The system often loses sight of the fact that these are people. They have lived very difficult lives or have experienced severe harm that led them to come here to seek our help, and it is legal for them to come ask for our help. But they feel like they immediately become just names on paper. That’s one of the hardest things. The stories get minimized [because] the interview process is streamlined. The interview these days is basically, ‘How many times have you been harmed or threatened? That’s not enough for you to be granted asylum.’ It’s traumatizing for asylum seekers just to tell these stories.”

Prospects for improving the system right now are not promising, according to Julia Brown at ILAP. There are systemic solutions proposed, like the USA Citizenship Act, introduced by the Biden Administration earlier in 2021, and the Dream and Promise Act. The latter would establish a pathway to citizenship for Deferred Action for Childhood Arrivals (DACA) recipients, Temporary Protected Status (TPS) holders, and Deferred Enforced Departure (DED) recipients.

Says Brown, “Those bills haven’t gone anywhere in the Senate, and that’s what we have seen for decades in Congress. Poll after poll shows that a majority of Americans want their neighbors and colleagues to have a pathway to citizenship, across political boundaries. That is incredibly frustrating for those families.”

The current \$3.5 trillion Build Back Better bill, under consideration as of October 1, includes provisions to give a pathway to citizenship to thousands of Mainers (for DACA recipients, those with TPS, and essential workers and farmworkers), affecting 7 or 8 million people nationwide. But, the plan to pass this bill through the process of budget reconciliation has been stymied.

“The Senate parliamentarian has said that immigration is not appropriate for budget reconciliation,” Brown says. “We disagree. It has enormous economic benefit. It would create a trillion dollars in economic activity over the next decade.”

ILAP has worked with its partners on state-level reforms as well. Brown says, “Maine law cannot change someone’s immigration status. So, we look at areas where we can improve their lives, especially in the areas of racial and criminal justice. If someone is penalized for driving while black or driving while brown, that can affect their immigration case.”

Maine has the ability to provide some public benefits to immigrants awaiting legal status. Gov. Mills changed the rules so that people who are waiting to apply for an immigration benefit can apply for General Assistance. Brown says, “MaineCare used to be less restrictive, but under current law, access to MaineCare is conditioned upon a person’s immigration status. For example, not even green card holders can access MaineCare until they’ve had a green card for five years. We are trying to change that.” However, due to a change in law for which ILAP lobbied, pregnant women and kids can now access MaineCare regardless of status.

With so much broken process and politics standing in the way of immigration in Maine and across the nation, one wonders whether the logjam blocking the path to citizenship can be cleared. Nonetheless, Maine is fortunate to have so many

tireless advocates and unsung heroes committed to the cause. The Foundation is proud to support the legal aid work of the Immigrant Legal Advocacy Project, as well as the Greater Portland Immigrant Welcome Center.

Find out more about immigration, refugees and legal aid at:

Immigrant Legal Advocacy Project: www.ilapmaine.org
 Maine Immigrant Rights Coalition: www.maineimmigrantrights.org
 Catholic Charities Maine: www.ccmaine.org
 Capital Area New Mainers Project: www.newmainersproject.org
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JEST IS FOR ALL

By Arnie Glick

**Myron, the Probate Attorney,
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GLICK

“Before we begin the meal, please be advised that the dessert pies will be held in trust until everyone has finished all of their cooked vegetables.”



PAUL MCDONALD is a shareholder and the general counsel of Bernstein Shur Sawyer & Nelson. In addition to his commercial and business litigation practice, Paul represents lawyers in ethics, risk management, and malpractice matters. He can be reached at pmcdonald@bernsteinshur.com.

Attorney Lateral Moves: Prioritize Your Obligations to Clients and Colleagues

The Covid-19 pandemic wreaked havoc on lawyer lateral hiring in 2020. According to a survey by the National Association for Law Placement (NALP), which analyzed data from United States-based law firms of all sizes, regions, and cities, overall lateral hiring plummeted by 30% from 2019 to 2020.¹ However, as the initial shocks of the pandemic have receded, a different story is emerging. According to one report, open positions at all levels at firms of all sizes across the country have increased by 150% since the start of the pandemic.² This may well continue and even accelerate as the seismic shifts toward remote working and virtual law practice settle out. Both lawyers making lateral moves and the firms from which they are departing must be mindful of the various duties, discussed below, that are owed to their clients as well as each other in these circumstances.

Timely Notify Clients of the Departure

A lawyer's duties of diligence, competence, and communication owed to the client are implicated when a lawyer decides to leave their firm. Rule 1.3 of the Maine Rules of Professional Conduct declares, generally, that the lawyer shall "act with reasonable diligence and promptness in representing a client."³ Rule 1.4 addresses communication with the client and requires a lawyer to communicate information regarding several enumerated categories related to the representation.⁴ Formal Opinions issued by the ABA Standing Committee on Ethics and Professional Responsibility have made clear that Rule 1.4 requires a lawyer to "promptly notify a client if a lawyer is changing law firm affiliation."⁵

Which Clients Should Be Notified?

When the departing lawyer has worked for a wide variety of

clients, especially when over a significant span of time, there can be a question as to which clients should be given notice of the departure. Generally speaking, notice should be given to "clients for whose active matters [the departing lawyer] is responsible or plays a principal role in the current delivery of legal services."⁶ In addition to clients, notice of an attorney departure may be required to be sent to others, for example courts where there is a pending litigation matter and opposing counsel.

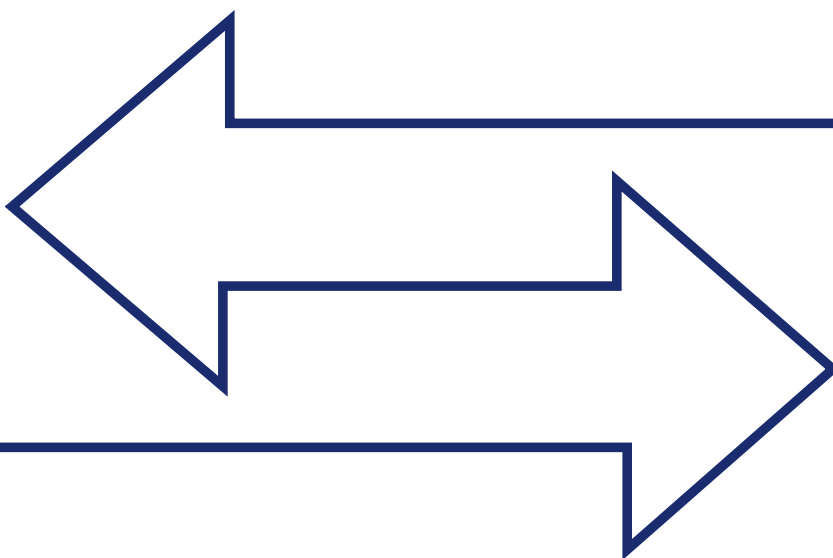
Joint Communications Are Preferred

Once a lawyer has notified the firm of their intended departure, the law firm may not restrict the departing lawyer from promptly notifying clients of that fact.⁷ On the other hand, the law firm has an equal right to notify firm clients of a lawyer's intended departure once receiving notice thereof.⁸ Notwithstanding that each party has the right to notify affected clients, the ABA Standing Committee on Ethics and Professional Responsibility has made clear that, "the firm and departing lawyer should attempt to agree on a joint communication to firm clients with whom the departing lawyer has had significant contact."⁹

The Client Has the Unfettered Right to Choose Its Counsel

"Clients are not property"¹⁰ and "a law firm never owns its client matters."¹¹ On the contrary, the client always has the unfettered right to the counsel of its choice. And that choice is not a binary one. Rather, the client may choose to remain with the firm, move its matter(s) to the departing lawyer, or choose a new lawyer/firm altogether.¹²

...as the initial shocks of the pandemic have receded, a different story is emerging. According to one report, open positions at all levels at firms of all sizes across the country have increased by 150% since the start of the pandemic.²



Assess The Ability To Continue The Representation

Both parties must assess whether they have the capacity and expertise to handle the client's current matter(s) should the client elect to have the matter(s) handled by that party after the departure. Keeping in mind the best interests of the client, if the departing lawyer is the only one within a firm with the expertise to represent the client in a specific matter and the firm does not have the ability to retain another lawyer(s) with similar expertise, the firm should not offer to continue the representation.¹³

Ensure an Ethical, Orderly, and Professional Transition

Notwithstanding that some departures will be less than amicable, both the departing lawyer and the law firm must ensure that the transition is ethical, orderly, and professional.

Protect The Client's Interest

There exists an overarching duty to protect the client's interests throughout and after a lawyer's departure from a firm.¹⁴ It goes without saying that, until the departure is effective, the matters on which the departing lawyer has been working must be attended to with diligence, promptness, and competence.¹⁵ If the client does not choose to transfer its work to the departing lawyer, that lawyer must return or destroy/delete any confidential information in their possession.¹⁶ Regardless of

the client's choice of counsel, both parties must take steps to ensure that the client's file is complete, organized, and up to date.¹⁷

Prior to a lawyer's departure, the firm must continue to provide access to all firm resources necessary for the departing lawyer to continue to represent a client. This includes access to staff and other lawyers, as well as the firm offices, network, and physical files.¹⁸ While a firm is not prohibited from reassigning new lawyers to a client matter after receiving notice of a lawyer's departure, the firm should refrain from doing so "absent client direction or exigent circumstances requiring protection of clients' interests."¹⁹

Be Mindful of Fiduciary and Other Duties to the Law Firm

After announcing their departure, but before actually departing, a lawyer typically will owe continuing fiduciary and other obligations to their firm. Although the bounds of permissible conduct are fact dependent, such duties typically would prohibit the lawyer, while still employed by the firm, from using firm resources to set up a new firm, improperly interfering with the firm's relationship with clients, and attempting to convince other lawyers and staff to join the new firm.²⁰

Conclusion

The Rules of Professional Conduct focus primarily on clients' interests in dealing with a lawyer's departure from a firm. The obligations in these circumstances include:

- (i) Promptly notifying affected clients of the departure date;
- (ii) Allowing the clients unfettered choice in deciding which lawyer(s) will represent them after the departure date;
- (iii) Ensuring a timely and orderly transition of client files; and
- (iv) Maintaining confidentiality of attorney-client communications and work product.

Even if relations between the lawyer and the firm have soured, and notwithstanding each one's reasonable expectations about retaining the client, both the departing lawyer and the firm should prioritize the best interests of the client in navigating the departure and any transition of the client's matter(s).

ENDNOTES

1 See National Association for Law Placement Press Release, July 7, 2021 https://www.nalp.org/uploads/PressReleases/NALPLateralHiringPressRelease_7July2021.pdf. Partner lateral moves decreased by 23.5% in 2020; associate lateral hiring decreased by 33.3%. *Id.*

2 See <https://www.reuters.com/business/legal/new-law-firm-data-shows-skyrocketing-demand-US-lawyers-2021-05-19/>.

3 Me. R. Prof. Conduct 1.3.

4 *Id.* Rule 1.4. The Rule states:

- (a) A lawyer shall:
 - (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in Rule 1.0(e), is required by these Rules;
 - (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
 - (3) keep the client reasonably informed about the status of the matter;
 - (4) promptly comply with reasonable requests for information; and

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(5) consult with the client about any relevant limitations set forth in the Maine Rules of Professional Conduct, or other law with respect to lawyers' conduct, when the lawyer knows that the client expects assistance not permitted by the Maine Rules of Professional Conduct or other law.

(b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

5 ABA Formal Opinion 2019-489 at 2; *see also* ABA Formal Opinion 99-414 at 2-3.

6 ABA Formal Opinion 1999-414 at 1; *see also* RESTATEMENT OF THE LAW THIRD, THE LAW GOVERNING LAWYERS, § 9(3)(a) (i) (2000).

7 ABA Formal Opinion 2019-489 at 2.

8 *Id.*

9 *Id.*

10 *Id.* at 3.

11 *Heller Ehrman LLP v. Davis Wright Tremaine LLP*, 527 B.R. 24, 30 (N.D. Cal. 2014) ("The client always owns the matter,

and the most the law firm can be said to have is an *expectation* of future business.") (emphasis in original).

12 ABA Formal Opinion 1999-414 at 6.

13 *See* M. R. Prof. Conduct 1.1 ("A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.")

14 *See* M. R. Prof. Conduct 1.16(d) ("Upon termination of representation, a lawyer shall take steps to the extent reasonably practicable to protect a client's interests....")

15 *See* M. R. Prof. Conduct 1.1, 1.3, requiring competent and diligent representation, respectively.

16 ABA Formal Opinion 2019-489 at 4.

17 *Id.*

18 *Id.*

19 *Id.* at 7.

20 *See generally, Meehan v. Shaughnessy*, 535 N.E.2d 1255 (Mass. 1989).

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NANCY A. WANDERER is Legal Writing Professor Emerita at the University of Maine School of Law. For decades, she oversaw the updating of Uniform Maine Citations, and her articles on proper citation, email-writing, and judicial opinion-writing have appeared in the Maine Bar Journal, the Maine Law Review, and the National Association of State Judicial Educators News Quarterly. *Off and Running: A Practical Guide to Legal Research, Analysis, and Writing*, co-authored with Prof. Angela C. Arey, is being used as a textbook in first-year legal writing classes. Nancy may be reached at wanderer@maine.edu.

The Notorious Legal Writer: Ruth Bader Ginsburg

One year ago, we lost our North Star—Ruth Bader Ginsburg—the woman who had guided our country toward justice and equality for more than half a century. Although she had been diagnosed with lung cancer and faced serious health challenges, her death seemed sudden and unexpected. Many of us dreamed that she would go on for much longer, keeping the Supreme Court and our country from straying too far from the path she had forged.

Although that dream was not to be, Justice Ginsburg's legacy provides the inspiration we need to keep fighting. Perhaps even more importantly, Justice Ginsburg has left us a blueprint for effective advocacy through legal writing. She spoke and wrote about the importance of good writing often, providing invaluable advice to lawyers and judges who want to continue her quest for justice and equality.

Early Lessons in Writing

Justice Ginsburg's appreciation for the importance of words and word order began as an undergraduate at Cornell, where her European literature professor, Vladimir Nabokov, taught her "the importance of choosing the right word and presenting it in the right word order," which totally changed both the way she read and the way she wrote.¹ She described Nabokov as "a man in love with the sound of words," who taught her how to "paint a picture in words."²

While Nabokov was sensitizing young Ruth to the importance of words, her constitutional law professor, Robert E. Cushman, was teaching her the importance of writing accurately

and concisely.³ Gently suggesting that his young research assistant's writing was too elaborate,⁴ Cushman advised her to cut out unnecessary adjectives, get rid of the clutter, and strive for "sparse, clear prose."⁵ He told her the reader should never have to read a sentence more than once.⁶ These lessons, learned as an undergraduate at Cornell, would become the hallmarks of Ginsburg's writing for the next 60 years.

Importance of Legal Writing

As a law school professor, Justice Ginsburg posted the following headline on all her exams: "Good, concise writing counts."⁷ She recognized that law students tend to believe they are bound to get *something* right on the exam if they include discussions of all kinds of issues, whether they are relevant or not.⁸ "In that mixed bag," she recalled, they thought they would surely hit on a few good ideas.⁹ But Ginsburg knew otherwise, teaching her students that lawyers do not "dump the kitchen sink" before a judge [or professor]; they refine their arguments to the ones a judge [or professor] can accept."¹⁰

Justice Ginsburg's appreciation for the power of good legal writing and her commitment to clear communication were fundamental to her success as a litigator and later as a Supreme Court justice. When she challenged gender discrimination in court, Ginsburg knew she needed "to educate the judges to persuade them. She aimed to 'give[e] them a perspective that probably never occurred to some of them.'"¹¹ Underlying her understanding of what it means to be a good legal writer was her belief that "law should be a literary profession," that "the best legal practitioners . . . regard law as an art as well as a craft."¹²

Ginsburg lamented that “many lawyers don’t appreciate the importance of how one expresses oneself both in the courtroom at oral argument and, most importantly, in brief-writing.”¹³ She blamed the education system for not teaching young people to write, pointing out that students who arrive at law school without developing good writing skills are not likely to gain those skills later, especially because so many law schools do not give legal writing courses high priority.¹⁴

Justice Ginsburg, herself, worked hard on her writing, going through innumerable drafts, always remembering Professor Cushman’s advice to write so clearly that no one would ever have to read a sentence more than once to understand its meaning.¹⁵ As a Supreme Court justice, she tried to write the kind of clear opinions she would have wanted to read as a law professor writing an article or an advocate preparing a brief.¹⁶ The most appreciative audience of all, however, was probably the lower court judges charged with understanding the rationales and applying the holdings in Ginsburg’s clear, concise opinions.

Effective Brief-writing

According to Justice Ginsburg, the brief is far more important than the oral argument in appellate advocacy: “It’s what we start with,” she stated; “it’s what we go back to. The oral argument . . . gives counsel an opportunity to face the decision-makers, to try to answer the questions that trouble the judges. So oral argument is important, but far less important than the brief.”¹⁷

Above all else, Justice Ginsburg emphasized scrupulous honesty in brief-writing.¹⁸ Because judges read the decision on appeal before they read the briefs, they can easily spot when an advocate is slanting or misstating facts or legal authority.¹⁹ As she stated, “A lawyer who slants an authority is going to be found out. I mean, there are all those law clerks here to ferret out exaggerations or misrepresentations. So be honest, I think, is the number-one rule.”²⁰ Once judges recognize that a brief contains even one misrepresentation, they will distrust the rest of the brief,²¹ and the advocate submitting the brief will lose credibility.

In writing briefs, Justice Ginsburg advised petitioners to anticipate the arguments the respondents are likely to make and account for them in the main argument in their initial briefs.²² Because petitioners already know the vulnerable points in their own arguments, they should address them in their affirmative statement rather than waiting for the reply brief, which otherwise could become an unconvincing series of “not so’s.”²³

Echoing the advice she received at Cornell, Justice Gins-

burg identified conciseness as a major goal in brief-writing.²⁴ According to her, it is neither necessary nor wise to fill all the space allotted for briefs; although 50 pages are allowed for opening briefs, she believed most arguments could be made in 20 or 30 pages.²⁵ As she put it, “Lawyers somehow can’t give up the extra space, so they fill the brief unnecessarily, not realizing that eye-fatigue and even annoyance will be the response they get for writing an overlong brief.”²⁶

Committed to collegiality and courtesy in the courtroom, Justice Ginsburg warned against making deriding comments about the opposing brief or saying anything nasty about opposing counsel or the judge whose decision is on appeal.²⁷ Calling those tactics distractions, she advised advocates to persuade the judge by the power of their reasoning, not by denigrating their opponents.²⁸ “If the other side is truly bad,” she said, “the judges are smart enough to understand that themselves; they don’t need the lawyer’s aid.”²⁹

Justice Ginsburg often included law from other countries in her briefs and opinions. Recognizing that such sources are not binding authority, she believed that “‘looking beyond our borders’ seems . . . altogether fitting and proper for lawyers and judges in the United States.”³⁰ Ginsburg also “had a flair for knowing what kind of nonlegal but relevant social and historical facts needed to be put in a brief to get the justices to understand” social and political realities in the cases coming before them.³¹

Plain English for Lawyers

Disliking legalese and even legal Latin, Justice Ginsburg believed that lawyers should dedicate themselves to using plain English.³² Such a shift would lead to shorter documents and enable the public to understand what lawyers and judges do “by reading an opinion or brief instead of getting it filtered through the lens of a journalist.”³³ While recognizing that the primary audiences for opinions are other judges and lawyers, Ginsburg believed that courts should care whether ordinary people can understand their opinions.³⁴

Ginsburg often wrote a shortened, simplified opinion to announce from the bench, hoping that her “press-release opinion” would be clear enough for a lay audience.³⁵ As she explained, “Because ‘[r]eaders of legal writing, on and off the bench, often work under the pressure of a relentless clock, . . . [t]hey may lack the time to ferret out bright ideas buried in complex sentences, overlong paragraphs, or too many pages. . . . Strong arguments can escape attention when embedded in dense or Delphic prose. Lucid, well-ordered writing can contribute immeasurably to a lawyer’s success as an advocate and counselor.”³⁶

The Legacy of Ruth Bader Ginsburg

Ruth Bader Ginsburg has been called “the most important woman lawyer in the history of the Republic.”³⁷ To praise her accomplishments by comparing her only to other women lawyers, however, denies her proper place in the pantheon of all lawyers and judges in the history of the Republic. Many legal scholars—and even Justice Antonin Scalia—compare her tireless work on behalf of gender equality to that of the great Justice Thurgood Marshall on behalf of racial equality.³⁸ To confine praise for her as a “woman lawyer” goes against her most firmly held principle that women and men should be judged according to their merit, not their sex. As she learned so many years ago in college, words matter.

What, then, is the legacy of Ruth Bader Ginsburg? Deborah L. Rhode, Professor of Law and Director of the Center on the Legal Profession at Stanford University, believes “[h]er iconic status, memorialized on T-shirts, tea cups, and tote bags, testifies to a life lived greatly in pursuit of social justice.”³⁹ Others praise her as a “lawyer’s lawyer,” a “master procedural” and “strategic thinker, who always played the long game. She developed a reputation for feistiness, but her secret weapon was that she was in no hurry. . . . [S]he took one step at a time, developing the law’s reluctant commitment to sex equality not through drama or bombast, but through careful case selection and an attention to doctrinal detail that could nudge the law incrementally.”⁴⁰

Underlying Justice Ginsburg’s commitment to justice and equality was her understanding that progress could only be achieved through precise, eloquent writing—writing that painted word pictures to help others comprehend the necessity for change. Her deep, abiding commitment to justice and equality, combined with her analytical rigor and incomparable legal writing skills, form her true legacy. “America is a more equal place because [Ruth Bader Ginsburg] insisted that words matter” in the pursuit of human dignity.⁴¹ May her memory be a blessing.

ENDNOTES

1 Bryan A. Garner, *Interviews with United States Supreme Court Justices*, 13 *Scribes J. Legal Writing* 1, 134 (2010).

2 *Id.* at 135.

3 Jane Sherron DeHart, *Ruth Bader Ginsburg: A Life* 35 (2018).

4 Bryan A. Garner, *supra* n. 1 at 135.

5 Jane Sherron DeHart, *supra* n. 3 at 35.

6 *Id.*

7 Bryan A. Garner, *supra* n. 1 at 133.

8 *Id.*

9 *Id.*

10 *Id.*

11 Gerald Lebovits, *The Notorious R.B.G.: Lessons on Legal Writing from the Legendary Ruth Bader Ginsburg*, <https://nysba.org/the-notorious-r-b-g-lessons-on-le-gal-writing-from-the-legendary-ruth-bader-ginsburg/> (quoting Justice Ruth Bader Ginsburg).

12 Bryan A. Garner, *supra* n. 1 at 133.

13 *Id.*

14 *Id.*

15 *Id.* at 134.

16 *Id.* at 135.

17 *Id.* at 136.

18 *Id.* at 137.

19 *Id.*

20 *Id.*

21 *Id.*

22 *Id.* at 143.

23 *Id.*

24 *Id.* at 142.

25 *Id.* at 137.

26 *Id.*

27 *Id.* at 142.

28 *Id.*

29 *Id.*

30 Ruth Bader Ginsburg, *My Own Words* 249 (2016).

31 Antonia Felix, *The Unstoppable Ruth Bader Ginsburg* 73 (2018).

32 *Id.* at 141.

33 *Id.*

34 *Id.*

35 *Id.*

36 Gerald Lebovits, *supra* n. 11 (quoting Ruth Bader Ginsburg, Foreword to Bryan A. Garner, *Garner on Language and Writing* xiii (2009)).

37 *The Most Important Woman Lawyer in the History of the Republic: How Did Ruth Bader Ginsburg Change America? More than a Dozen Legal Thinkers Weigh In*, Politico, Sept. 18, 2020, <https://www.politico.com/news/magazine/2020/09/18/tktk-418191>.

38 *Id.* (comments of Ilya Shapiro, Director of the Robert A. Levy Center for Constitutional Rights at the Cato Institute).

39 *Id.* (comments of Deborah L. Rhode, Professor of Law and Director of the Center on the Legal Profession at Stanford University).

40 *Id.* (comments of Jamal Greene, Dwight Professor of Law at Columbia Law School).

41 *Id.* (comments of Robert L. Tsai, Professor of Law at American University).



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EVAN J. ROTH After nearly 20 years in Portland as an assistant U.S. attorney, Evan is now an administrative judge for the Merit Systems Protection Board in Denver. He can be reached at evan.j.roth@icloud.com.



A bird in the hand is worth two in the bush.

Schaefer v. National Labor Relations Board, 464 U.S. 945, 946 (1983) (O'Connor, J., dissenting).

Michael M. Schaefer was the owner of a Pittsburgh business that recovered slag. In 1978, after his employees voted in favor of Union representation, the National Labor Relations Board ("NLRB") charged Schaefer with an unfair labor practice for laying off six pro-Union employees. Schaefer negotiated a settlement with the Union, which included various payments to the affected employees. In exchange, the employees released Schaefer from any additional liability.

The NLRB, however, insisted the Union settlement, and the employee releases, did not block its power to require Schaefer to pay the employees an additional \$27,000 in back pay. According to the NLRB, the public had an interest in requiring a supplemental back pay award, which could not be bargained away in a private settlement between Schaefer and the Union and the employees.

The U.S. Court of Appeals for the Third Circuit agreed with the NLRB and required Schaefer to pay the extra money. Schaefer appealed to the Supreme Court, but the Court declined to hear the case.

Justice O'Connor dissented because she wanted the Court to hear the appeal and require the NLRB to explain its refusal to honor a private settlement. Justice O'Connor was particularly miffed by the NLRB's insistence that a further back pay award was necessary because the private negotiated settlement somehow did not provide "substantial remedies" for the underlying violation.

On that issue, from Justice O'Connor's perspective, the private parties obviously negotiated a settlement that was substantial enough for everyone involved, without waiting around for the NLRB. Or, to put it another way, the private parties settled based on the "economic logic" of "the old hunter's adage," quoted above.

Disclaimer: The views expressed are those of the author and do not necessarily represent the position of the Merit Systems Protection Board or the United States government.



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