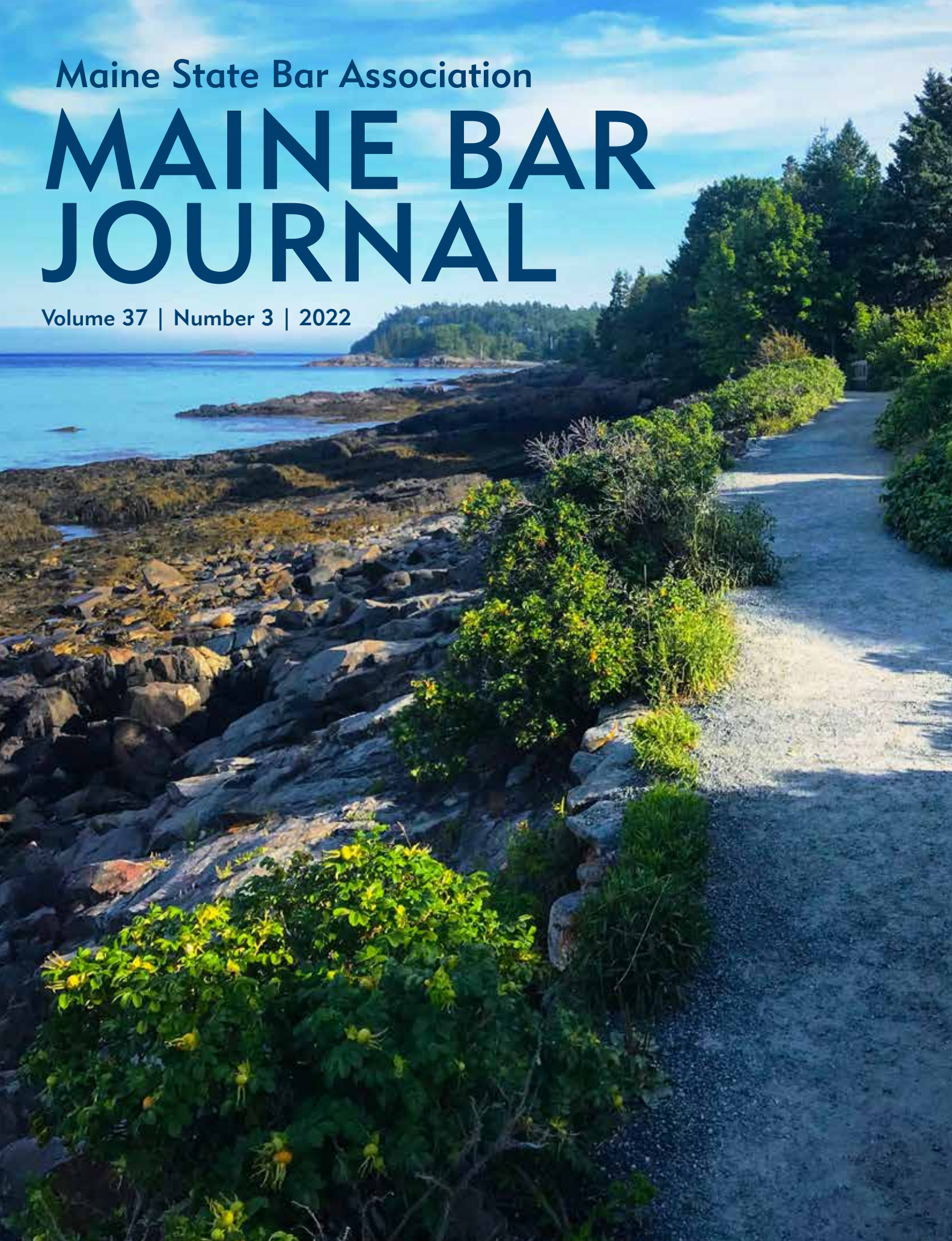


Maine State Bar Association

# MAINE BAR JOURNAL

Volume 37 | Number 3 | 2022







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DISCLAIMER: Views and opinions expressed in articles are the authors' own.  
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)."  
ON THE COVER: iStock

124 STATE STREET, AUGUSTA ME 04330  
VOLUME 37 | NUMBER 3 | 2022  
FOR ADVERTISING, SUBSCRIPTION,  
OR SUBMISSION INFORMATION,  
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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](http://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](http://www.mainebar.org)



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## Work Progresses on Behalf of Members, Leadership Development, and Access to Justice

I hope you are well, have enjoyed a beautiful Maine summer, and are finding your practice rewarding. I am happy to report that the Maine State Bar Association has had a very successful year and is in excellent shape financially and organizationally. I have included a summary of our recent activities below, and, as always, I look forward to hearing from you. Please do not hesitate to contact me if the MSBA can be of assistance, or if you have suggestions for improvement.

**Summer Bar Conference.** It was a pleasure to see so many of you at our Summer Bar Conference in Bar Harbor on June 15-17 – our first in-person meeting since 2019. Attendance was strong (over 200 attendees) and we have received lots of positive feedback. In particular, it seems like the cruise of Frenchman Bay on the Thursday evening of the Summer Bar Conference was a big hit. The boat set out from a pier in downtown Bar Harbor and followed the coast south into Acadia National Park with lovely views of Great Head, Sand Beach, Otter Cliffs and Thunder Hole. From there, we toured Egg Rock Island, where seals played in the surf, Ironbound Island, where we saw bald eagles, and then returned through the Porcupine Islands. Another highlight was a series of Native and Indigenous Law CLEs, which included presentations by Professor Darren Ranco from the University of Maine, Eric Mehnert, the Chief Judge of the Penobscot Nation Tribal Court, and Esther Labrado of Drummond Woodsum. Ezra Willey and I are working with a group of tribal nations attorneys to expand this content into a multi-day seminar in the Spring of 2023, perhaps at the Maine School of Law. A poignant moment was on Wednesday evening

at the champagne toast, where we honored those who have passed since we last gathered some thirty months ago. Finally, we honored Diedre Smith and Arie Eee as recipients of the Caroline Duby Glassman Award, and Jackie Rogers, Charlie Dingman, and Charlie Soltan as recipients of the John W. Ballou Award.

Next year, the Winter Bar Conference will be held at the Westin Portland Harborview in January, and we will return to Bar Harbor for the Summer Bar Conference in June.

**Civil Process Stakeholders Working Group.** We have heard your concerns about the backlog impacting civil cases in Maine courts and have been working with the Maine Supreme Judicial Court to establish a Civil Process Stakeholders Working Group. The purpose of this Group is to work with the Judicial Branch to assess and recommend policies, processes, rules, technology, legislation, and other actions, taking into account for the individual features of particular kinds of cases, in order to effectuate the just, efficient, and relatively inexpensive resolution of civil cases for the benefit of the civil court system. The Group will be made up of representatives of the MSBA, Maine Trial Lawyers Association, the Justice Action Group, attorneys with a mixed civil practice, and representatives of the court system, and will meet at least twice a year with the Chief Justices of the Supreme Court, Superior Court, and District Court to discuss the Group's suggestions and recommendations. We anticipate an order creating this Group to be issued by the Chief Justice in the late summer of this year.





**ALPS Conference.** Each year the ALPS Legal Malpractice Insurance Company hosts a bar leaders retreat at its headquarters in Missoula, Montana and generously covers our travel and hotel accommodations to attend. ALPS is focused on solo and small firms, and so the attendees generally come from bar associations with rural demographics, such as Idaho, Maine, Missouri, Montana, Nevada, South Carolina, South Dakota, Utah, Vermont, Washington, West Virginia, and the Virgin Islands. I was able to attend this year, along with our Executive Director, Angela Armstrong, and the President-elect, Stacy Stitham. The content of the presentations was outstanding, with a focus on how bar leaders can work to make attorneys healthier and happier by focusing on mindfulness and dealing with the issues that plague the bar, including anxiety, mental illness, and substance abuse. Despite the extreme heat (it was 95-100 degrees each day we were there) I completed a 10-mile hike in the Bitterroot River basin on the outskirts of Missoula, which was spectacular.

Chris Newbold of ALPS also provides strategic planning sessions for bar associations and will be coming to Maine to facilitate our Board of Governors retreat at the Rangeley Inn on September 12 and 13. If you have suggestions about items you would like to see included in the MSBA's strategic plan, please let me know.

**MCILS.** As has been covered extensively in the media recently, Maine's indigent legal defense system is in crisis, as the number of rostered attorneys will soon be insufficient to meet

the demand of cases that need to be assigned by the Maine Commission of Indigent Legal Services. We recently hosted a Bar Talk with Justin Andrus, the Executive Director, who gave an overview of current situation and made a plea for attorneys to take cases from MCILS to ease the strain on the system. This Bar Talk can be viewed on our You Tube channel, if you are interested. You will be hearing more from us on this important issue (including advocacy in the Legislature in 2022-23 for more funding for MCILS and higher hourly rates for rostered attorneys), but if you meet the criteria to take cases from MCILS, please do so! The state urgently needs your help to meet its constitutional duty to provide counsel for indigent defendants in Maine courts.





ANGELA P. ARMSTRONG is the Maine State Bar Association's executive director. She can be reached at [aarmstrong@mainebar.org](mailto:aarmstrong@mainebar.org).

## MSBA Transitions to Decisis for Online Legal Research

We are excited to announce that beginning September 1, MSBA members will gain complimentary access to Decisis™ — a next-generation legal research platform, offering a streamlined, easy-to-use interface, a full library of primary caselaw, and a reliable citator.

The MSBA is the third bar association to partner with Decisis™ to offer access to its platform as an exclusive benefit of membership, valued at \$1,740 annually.

For more than 20 years, the MSBA provided Maine lawyers with access to affordable online legal research through Casemaker. In 2020, we were surprised when Casemaker announced that it had been acquired and was merging with one of its competitor platforms, Fastcase. With a binding contract still in place and no alternative legal research engines operating in the association space at that time, the MSBA began the work of transitioning our membership from Casemaker to Fastcase. On behalf of the Association, I would like to extend our heartfelt appreciation for your patience and effort during that transition.

Although Fastcase was continuing to serve the research needs of our members, I was concerned about the clunky user interface and significant compatibility issues we were experiencing between Fastcase and our website. Our board and staff welcomed the opportunity to seek out a more robust product to support our membership that could be implemented without service interruptions. During this search, we learned of Decisis™, a new legal research platform designed specifically for bar associations. To ensure that the MSBA was providing the best user experience for its members, our staff convened a group of test users to compare Decisis with Fastcase and provide feedback to the MSBA's Membership Committee. Our test group preferred the uncluttered interface, the reliable and consistent search results, and how intuitive Decisis is to use (dare we say Google-like?).

Decisis™ has a responsive customer support team who will help you once you begin to use the new platform. Our shared goal is to support you and your practice with what we are confident is a faster, more efficient and reliable research solution. The MSBA will also be offering free CLE training on the Decisis





platform. The MSBA will also be offering free CLE training on the Decisis platform in late August and early September. September dates include Sept 1, 6, 7, and 8. Please visit [www.mainebar.org](http://www.mainebar.org) for more information on all the training dates and times available, and to register for one of the sessions. Additionally, the MSBA will offer Decisis training in conjunction with Legal Year in Review on November 17 at the Augusta Civic Center.

Change is never easy, and we appreciate your flexibility and patience as we navigate the transition to this new platform. As you begin to try it out, we encourage you to let us know what you think. And when you hit pro status, do tell us about any tips or shortcuts you find—we'll be happy to share them with your colleagues and to share theirs with you. As always, you can contact me by phone at (207) 622-7523 or by email ([aarmstrong@mainebar.org](mailto:aarmstrong@mainebar.org)) with any ideas, questions, or concerns about the Maine State Bar Association. Thank you!



## Rural Practice Scholarship Honors Former MSBA Director

Following his passing in September 2021, former MSBA Executive Director Edward M. Bonney, who served the bar association for 25 years, has been honored with Edward M. Bonney Rural Law Fellow Fund. Bonney is remembered not only for his work at the MSBA, but by a lifelong dedication to public service. MSBA Past Presidents Paul Chaiken and Susan Hunter, with the assistance of Maine Law Dean Leigh I. Saufley, MSBA Executive Director Angela Armstrong, and Jennifer Crane from the Advancement Office of the University of Maine School of Law Foundation established the fund through the Foundation. The Edward M. Bonney Rural Law Fellow, as the student will be known, will be a rising 2L or 3L, who will be paired with a lawyer-mentor in a rural community and employed for 10 weeks of full-time summer work, supported by a stipend of \$6,000 to \$7,500. Please consider helping to fund this worthwhile project in Ed's honor. Learn more about the scholarship on the Maine Law website at <https://bit.ly/3PbAiVM>.





## LAW DAY ESSAY CONTEST 2022

### FIRST PLACE

#### The 19th Amendment's Effect on the Political Climate of the United States of America

By Edward Conway, Greely High School  
*Published as submitted to the MSBA.*

Through the more than 230 years that the Constitution has existed, the United States has undergone numerous changes. Changing times have called on the Constitution to serve as America's governmental north star, guiding her through the ever-evolving challenges the country faces. What makes the Constitution so remarkable is that its principles still remain, and its significance does as well. In recent times, the United States has endured a so-called "time of change," meaning the Constitution's use has been heavily employed. Within a two-year span, the United States has witnessed a president refuse to concede an election, an unprecedented pandemic threaten the individual rights of Americans, and the once widely accepted right of free speech come under attack by various groups. The Constitution has largely been responsible for the manner in which the United States has conquered complex obstacles, and for that reason, the American people should continue their faith in the Constitution. In times of change, the Constitution plays an indispensable role in determining the processes of

government, as well as protecting the individual rights of the American people.

In the aftermath of the 2020 election, President Donald Trump refused to concede the race, despite current President Joe Biden being declared the winner on November 7th.<sup>1</sup> This refusal to accept the results of a democratic election was unprecedented in U.S. presidential election history. According to Politico, "No incumbent president has ever made such expansive and individualized pleas to the officials who oversee election results."<sup>2</sup> While the false claims of election fraud have divided Americans, undermined the legitimacy of the current administration, and ultimately became the catalyst for an insurrection at the capitol, President Biden was inaugurated in January and sworn in with a democratic transition of power. Despite the claims made by the sitting president, The United States maintains its tradition of peaceful transitions of power due to the process of presidential elections being clearly laid out by Article II, Section 1 of the Constitution.<sup>3</sup> After the election results revealed that Biden was victorious, Trump's legal team filed legal challenges in various battleground states, most of them being dismissed by the courts due to their unsubstantiated claims.<sup>4</sup> State courts found that there was no evidence to support any fraudulent activity, meaning the election was conducted constitutionally, in accordance with Article II, Section 1. In a time of change, when an incumbent president refused to admit that he was defeated, the Constitution provided the standard that elections should operate by allowing this country to swiftly resolve the controversy.



The Bill of Rights was included in the Constitution to guarantee certain rights for American citizens. The first amendment of the Bill of Rights grants all citizens the right to freedom of speech, a fundamental right to a truly liberal society. While differing opinions on the interpretation of free speech have always existed in the United States, in recent years there has been a growing movement supporting the idea that certain speech deemed as “hate speech” should be banned.<sup>5</sup> According to the Washington Post, “A shockingly large minority supports government restrictions on some kinds of speech.”<sup>6</sup> While increased consciousness of intolerance helps Americans strive to become more inclusive, the movement to ban offensive speech is fundamentally un-American and will lead to the suppression of those who are powerless. Fortunately, the voices calling for governmental censorship of speech have not influenced the Constitution’s guarantee of free expression. In the 2017 Supreme Court case of *Matal v. Tam*, the Supreme Court unanimously ruled that there is no hate speech exception to First Amendment rights.<sup>7</sup> As long as the First Amendment is included within the Bill of Rights, Americans will freely exercise their right to voice their opinions, regardless of their popularity. In a changing time, where the cornerstone of American freedom is being contested, the Constitution plays the essential role of protecting individual rights.

The COVID-19 pandemic has devastated the United States, as well as the rest of the world. It has killed over 973,000 Americans and impacted the lives of millions more.<sup>8</sup> The pandemic is perhaps the most explicit example of a time of change that has occurred in recent history. Millions of Americans became accustomed to wearing masks, social distancing, and avoiding large gatherings. When a miraculously effective vaccine became available for adults, the future appeared bright for the fierce battle being waged against the virus. In an effort to increase the vaccination rate, the Biden Administration mandated that “large businesses” must require their employees to be vaccinated or tested weekly for COVID. This Occupational Safety and Health Administration (OSHA) emergency mandate was then taken to the Supreme Court and struck down.<sup>9</sup> Regardless of the intentions of the OSHA mandate, the Supreme Court found that it violated the separation of powers, delegated by the Constitution. Article I of the Constitution places the federal government’s power to govern the citizens in the hands of the elected representatives, and the OSHA mandate had no congressional authorization.<sup>10</sup> In his concurrence, Justice Neil Gorsuch expressed his interpretation that, “Any new laws governing the lives of Americans are subject to the robust democratic processes the Constitution demands.”<sup>11</sup> When a pandemic spawns a period of unparalleled change, the Constitution maintains the significant role of protecting individual rights, by holding the government accountable for not complying with the separation of powers.

The Constitution is the document that escorts the United States along the eternal path of becoming a more perfect union. It enforces the separation of powers and the existence of the rights of all citizens. Without it, there would be no standard for how the government should operate in times of change, leading to either chaos, governmental overreach, or both. In my seventeen years, I have taken for granted the brilliance of the Constitution and what it has accomplished for our people. The Constitution has allowed us to overcome threats to our democracy and will continue to do so, especially in changing times.

## ENDNOTES

- 1 Gerhart, Ann. “Election Results under Attack: Here Are the Facts.” The Washington Post. WP Company, December 9, 2020. <https://www.washingtonpost.com/elections/interactive/2020/election-integrity/>.
- 2 Kumar, Anita, and Gabby Orr. “Inside Trump’s Pressure Campaign to Overturn the Election.” POLITICO. POLITICO, December 21, 2020. <https://www.politico.com/news/2020/12/21/trump-pressure-campaign-overturn-election-449486>.
- 3 “The Constitution of the United States: A Transcription.” National Archives and Records Administration. National Archives and Records Administration. Accessed March 27, 2022. <https://www.archives.gov/founding-docs/constitution-transcript>.
- 4 Gerhart, Ann. “Election Results under Attack: Here Are the Facts.” The Washington Post. WP Company, December 9, 2020. <https://www.washingtonpost.com/elections/interactive/2020/election-integrity/>.
- 5 Wermiel, Stephen J. “The Ongoing Challenge to Define Free Speech.” Americanbar.org. Accessed March 27, 2022. [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/).
- 6 Knox, Olivier, and Caroline Anders. “Analysis | Most Americans Support Freedom of Speech. but...” The Washington Post. WP Company, January 7, 2022. <https://www.washingtonpost.com/politics/2022/01/06/most-americans-support-freedom-speech/>.
- 7 Hudson Jr., David L. *Matal v. Tam*. Middle Tennessee State University. Accessed March 27, 2022. <https://www.mtsu.edu/first-amendment/article/1528/matal-v-tam#:~:text=In%20Matal%20v.,it%20expresses%20ide as%20that%20offend.%E2%80%9D>.
- 8 “Coronavirus in the U.S.: Latest Map and Case Count.” The New York Times. The New York Times, March 3, 2020. <https://www.nytimes.com/interactive/2021/us/covid-cases.html>.
- 9 Michelle M. Mello, William B. Gould IV, Beth Duff, and Q&A with Sharon Driscoll. “A Look at the Supreme Court Ruling on Vaccination Mandates.” Stanford Law School,

January 20, 2022. <https://law.stanford.edu/2022/01/20/a-look-at-the-supreme-court-ruling-on-vaccination-mandates/>.  
 10 “The Constitution of the United States: A Transcription.” National Archives and Records Administration. National Archives and Records Administration. Accessed March 27, 2022. <https://www.archives.gov/founding-docs/constitution-transcript>.  
 11 “National Federation of Independent Business v. OSHA.” Supreme Court of the United States, January 13, 2022. [https://www.supremecourt.gov/opinions/21pdf/21a244\\_hgci.pdf](https://www.supremecourt.gov/opinions/21pdf/21a244_hgci.pdf).

## WORKS CITED

“Coronavirus in the U.S.: Latest Map and Case Count.” The New York Times. The New York Times, March 3, 2020. <https://www.nytimes.com/interactive/2021/us/covid-cases.html>.  
 “The Constitution of the United States: A Transcription.” National Archives and Records Administration. National Archives and Records Administration. Accessed March 27, 2022. <https://www.archives.gov/founding-docs/constitution-transcript>.  
 Gerhart, Ann. “Election Results under Attack: Here Are the Facts.” The Washington Post. WP Company, December 9, 2020. <https://www.washingtonpost.com/elections/interactive/2020/election-integrity/>.  
 Jr., David L. Hudson. *Matal v. Tam*. Middle Tennessee State University. Accessed March 27, 2022. [https://www.mtsu.edu/first-amendment/article/1528/matal-v-](https://www.mtsu.edu/first-amendment/article/1528/matal-v-tam)

[tam#:~:text=In%20Matal%20v.,it%20expresses%20ideas%20that%20offend.%E2%80%9D](https://www.mtsu.edu/first-amendment/article/1528/matal-v-tam#:~:text=In%20Matal%20v.,it%20expresses%20ideas%20that%20offend.%E2%80%9D).  
 Knox, Olivier, and Caroline Anders. “Analysis | Most Americans Support Freedom of Speech. but...” The Washington Post. WP Company, January 7, 2022. <https://www.washingtonpost.com/politics/2022/01/06/most-americans-support-freedom-speech/>.  
 Kumar, Anita, and Gabby Orr. “Inside Trump’s Pressure Campaign to Overturn the Election.” POLITICO. POLITICO, December 21, 2020. <https://www.politico.com/news/2020/12/21/trump-pressure-campaign-overturn-election-449486>.  
 Michelle M. Mello, William B. Gould IV, Beth Duff, and Q&A with Sharon Driscoll. “A Look at the Supreme Court Ruling on Vaccination Mandates.” Stanford Law School, January 20, 2022. <https://law.stanford.edu/2022/01/20/a-look-at-the-supreme-court-ruling-on-vaccination-mandates/>.  
 “National Federation of Independent Business v. OSHA.” Supreme Court of the United States, January 13, 2022. [https://www.supremecourt.gov/opinions/21pdf/21a244\\_hgci.pdf](https://www.supremecourt.gov/opinions/21pdf/21a244_hgci.pdf).  
 Wermiel, Stephen J. “The Ongoing Challenge to Define Free Speech.” Americanbar.org. Accessed March 27, 2022. [https://www.americanbar.org/groups/crsj/publications/human\\_rights\\_magazine\\_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/](https://www.americanbar.org/groups/crsj/publications/human_rights_magazine_home/the-ongoing-challenge-to-define-free-speech/the-ongoing-challenge-to-define-free-speech/).

# LAW DAY 2022

## SECOND PLACE

### Reconsidering the Second Amendment in a Time of National Crisis

By Fiona Barry, Greely High School  
*Published as submitted to the MSBA.*

When the Constitution was ratified in 1788, it provided the fundamental laws by which the country was to be run. Knowing that they couldn't see into the future, the Founding Fathers added the fifth article of the Constitution so the

document could be subject to change, as it wouldn't fit the changing nation forever.

Indeed, from the 13th Amendment abolishing slavery to the 16th Amendment granting women the right to vote, American history offers up many examples when lawmakers have amended the Constitution in times of change. As seen in these examples, a change that is controversial at one point may seem obvious to future generations. Making change can be difficult, but it is often necessary.

And today, it is necessary for lawmakers to reconsider the Second Amendment.

The reasoning behind the Second Amendment dates back to the Revolutionary War, when civilian-led militias lead the rebellion against the British. In order to protect America in



the future, the Second Amendment was instituted to protect the citizens' right to defend their country. Because of this, the U.S. goes into any gun control debate with the predetermined notion that it's an American's right to own a gun. We now have a strong army made to protect us; we do not need to protect ourselves.

Some argue that citizens still need the right to own guns to protect themselves, as they will deter possible criminals and provide a mechanism of self defense. However, studies have repeatedly proven that increased gun ownership only leads to increased gun violence.

A study by Adam Lankford provided the data that while Americans make up only 4.4 percent of the world's population, they also own 42 percent of the world's guns, and make up for 31 percent of gunmen in worldwide mass shootings. Lankford's research of worldwide gun violence also reveals a strong correlation between the rate of gun ownership and the likelihood of a mass shooting. Countries with higher gun ownership rates have higher gun homicide rates. The opposite is also true; countries with fewer guns have fewer gun related deaths.<sup>1</sup> It cannot be argued that allowing citizens to own guns increases their safety.

Moreover, amending the Constitution to strengthen gun regulations would likely minimize the number of suicides in the U.S. In 2020, 45,979 people died by suicide.<sup>2</sup> According to the Harvard School of Public Health, 52 percent of people who commit suicide use a firearm. While drug overdose is a more common method of attempted suicide, it is fatal in less than 3 percent of cases, whereas gun related suicides have an 85 percent fatality rate.<sup>3</sup> Guns are more dangerous, and by allowing civilians easy access to them, we, as Americans, are partially at fault for the tragedy that is suicide deaths in the U.S.

Another issue with gun suicides is that it can often be an impulsive decision. A 2001 study showed that among 13- to 34-year-olds who survived near-fatal suicide attempts, 86 percent reported having attempted within 8 hours of entertaining the idea.<sup>4</sup> This impulsivity is part of what makes guns so dangerous. With easy access to a gun, a person can do significant damage to themselves and those around them in a moment of crisis that is much more difficult without a firearm.

With all this evidence connecting gun ownership to the high gun-related death rate in the U.S., it is shocking that the government hasn't done anything about it. Sadly, politicians are afraid of losing the votes they need to be reelected, and of crossing powerful groups such as the NRA or other political allies. Because of this, important topics like gun violence are neglected. Lawmakers need to consider the consequences before shutting down gun regulation bills. The Constitution

was created with full intent that it would be modified in the future when the need arose. We cannot let politics get in the way of this crucial function of the document.

While the Second Amendment may have nurtured unionized feelings surrounding patriotic defense after the Revolutionary War, now it has simply become a politically divisive issue, creating stronger lines between parties, and drawing focus away from the lives being lost. The Second Amendment is no longer serving its purpose. How can we say we have "form[ed] a more perfect union" when we are ignoring the heartbreaking deaths of thousands upon thousands of Americans because of something as trivial as politics?

The Second Amendment was originally instituted to protect Americans' right to bear arms after the Revolutionary War to protect the country. We now have a military to defend the U.S. and civilian-owned guns are no longer needed. While the Second Amendment may have helped the country in the past, the United States has grown and developed past this point and is now only hurting us as a society. It is time to make a change to protect the lives of ourselves and our posterity.

Since the late 1700s, the country has gone through many changes, and as we learn, grow, and develop, our legislation needs to as well. Thanks to the fifth article of the Constitution, we have the ability to amend the Constitution when the need arises. This is one of those times.

This is a national crisis.

The Constitution was made to be amended, and at this time, it is necessary. In order to protect American lives, we must implement stronger gun regulations.

## ENDNOTES

1 Fisher, Max, and Josh Keller. "Why Does the U.S. Have So Many Mass Shootings? Research Is Clear: Guns." *The New York Times*, 7 Nov. 2017, <https://www.nytimes.com/2017/11/07/world/americas/mass-shootings-us-international.html>. Accessed 15 Mar. 2022.

2 "Suicide Statistics." *American Foundation for Suicide Prevention*, 28 Feb. 2022, <https://afsp.org/suicide-statistics/>. Accessed 15 Mar. 2022.

3 "How Do People Most Commonly Complete Suicide?" *Means Matter*, Harvard, 23 Apr. 2014, <https://www.hsph.harvard.edu/means-matter/basic-suicide-facts/how/>. Accessed 17 Mar. 2022.

4 Drexler, Madeline. "Guns & Suicide." *Harvard Public Health Magazine*, Harvard, 1 Dec. 2016, [https://www.hsph.harvard.edu/magazine/magazine\\_article/guns-suicide/](https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/). Accessed 15 Mar. 2022.

## WORKS CITED:

Drexler, Madeline. "Guns & Suicide." *Harvard Public Health Magazine*, Harvard, 1 Dec. 2016,

[https://www.hsph.harvard.edu/magazine/magazine\\_article/guns-suicide/](https://www.hsph.harvard.edu/magazine/magazine_article/guns-suicide/). Accessed 15 Mar. 2022.

Fisher, Max, and Josh Keller. "Why Does the U.S. Have So Many Mass Shootings? Research Is Clear: Guns." *The New York Times*, 7 Nov. 2017, <https://www.nytimes.com/2017/11/07/world/americas/mass-shootings-us-international.html>. Accessed 15 Mar. 2022.

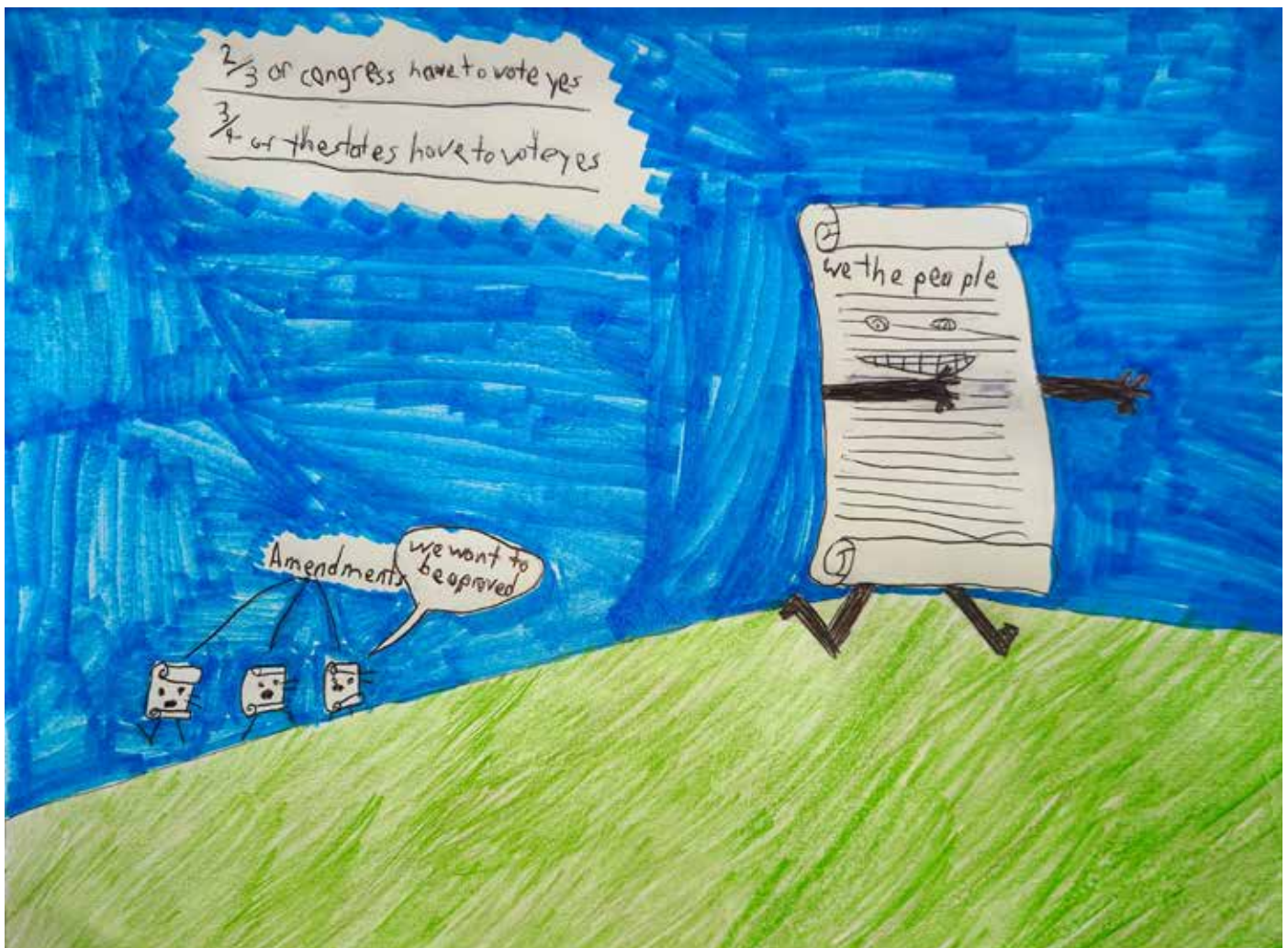
"How Do People Most Commonly Complete Suicide?" *Means Matter*, Harvard, 23 Apr. 2014, <https://www.hsph.harvard.edu/means-matter/basic-suicide-facts/how/>. Accessed 17 Mar. 2022.

"Suicide Statistics." *American Foundation for Suicide Prevention*, 28 Feb. 2022, <https://afsp.org/suicide-statistics/>. Accessed 15 Mar. 2022.

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Since 1998, MARK BASSINGTHWAIGHTE, Esq. has been a Risk Manager with ALPS, an attorney's professional liability insurance carrier. In his tenure with the company, Mr. Bassingthwaighte has conducted over 1200 law firm risk management assessment visits, presented over 400 continuing legal education seminars throughout the United States, and written extensively on risk management, ethics, and technology. Mr. Bassingthwaighte is a member of the State Bar of Montana as well as the American Bar Association where he currently sits on the ABA Center for Professional Responsibility's Conference Planning Committee. He received his J.D. from Drake University Law School.

## Attorney Departure From Both Sides

Several books have been written on the topic of attorney departure, many of which provide valuable information on everything from partnership law and the fiduciary duty of loyalty to whether a firm's client list is a trade secret. While important, I suspect many attorney departures occur without anyone ever taking the time to pick up one of these books, if for no other reason than the lack of time. Given my suspicion, I offer the following to succinctly cover the basics.

### **What's the most important thing everyone needs to know?**

At all times, keep the interests of all impacted clients first and foremost in mind when making any departure related decisions. A failure to do so is just asking for trouble.

### **Can a firm prevent an attorney from leaving, or at least prevent the departing attorney from competing with the firm for business?**

The short answer is nope. Clients are not property and efforts to try and restrict a departing attorney's right to practice are often found to be unethical and/or unenforceable agreements. Clients get to decide who they want to work with, period.

### **Who should be notified and when?**

Here, timing is everything. The firm should be notified as soon as possible after a decision to leave has been made and before any clients have been notified. While there are no bright lines, there is a difference between thinking about leaving a firm and committing to leaving. Note, however, that committing to leaving does not mean waiting until after an agreement spelling out the terms of a lateral move has been formalized. It means when the departing attorney has made the mental decision to begin investigating options. The reason is one should not allow a firm to make an untimely and potentially poor business decision unaware of an upcoming departure. Of course, if a partnership agreement exists and the document spells out the notice requirements for an attorney departure,

abide by the terms of that agreement.

Clients for whom the departing attorney is primarily responsible are to be promptly notified once a decision to depart has been made. The reason is you want to allow time for all impacted clients to be notified and to give these clients sufficient time with which to decide who they want to represent them post departure.

If a court or tribunal is involved, timely notice of necessary attorney withdrawals must be given for any attorney of record who will no longer be involved. Motions to withdraw should be filed and be certain to follow-up by verifying that a Substitution of Counsel has been filed.

### **From whom should the client notice come?**

In a perfect world a joint letter from the firm and the departing attorney would be sent to all impacted clients. This letter should inform these clients of the upcoming change as well as set forth the options they will have to choose from. If the departing attorney will remain in practice, the options would normally be the matter/s stay with the firm, go with the departing attorney, or the client may select to have their matter/s transferred to a different firm. Keep in mind that there is no rule prohibiting differing default options should any client not respond to the notification letter.

If a joint letter isn't possible, don't try to grab as many clients as possible and never disparage the departing attorney or the firm one is departing from in the separate notices that will be sent to all impacted clients. Publicly airing your dirty laundry risks alienating clients, damaging relationships, and damaging your reputation. Remember, everyone at your firm is in the employ of your clients. You work for them and are to always put their interests first. This means the decision as to who gets the file post departure will always remain solely with the client.

### What about client files?

When a client file leaves with the departing attorney or is going to go to a different firm keep the following in mind. First, the file must be delivered in a reasonable time and in a useful format. Unless you can do so without causing harm to the client, you cannot hold a client file until the firm is paid its share or the account is brought current.

Next comes the decision regarding what must be turned over, which can be a difficult one. A practical guideline is this. Beyond the obvious, such as client originals, if you billed for producing a document, it belongs to the client. Include it in the file.

Last, but certainly not least, if you have any concerns about potential liability on any given file, make a copy of the file at your expense. Always do this before the file physically leaves the premises because trying to obtain a copy later is going to be problematic. Of course, keep a record of what files went where, when they left, and document with all departing clients that the firm's responsibility for these files has come to an end.

### Finally, are there any cautions to be aware of?

Yes, there are. Addressing the firm first, lockout tactics directed at the departing attorney are never going to pass ethical muster, so don't go there. For example, don't try to prevent the departing attorney from continuing to work on client files that he has primary responsibility for or refuse to provide the new contact information to clients. That said, a departing attorney can't ignore her fiduciary duties to the firm. While she may make necessary logistical arrangements prior to departure such as renting office space, opening bank accounts, or purchasing office equipment, she cannot engage in secret discussions to lure away staff, other firm attorneys, and or firm clients. She also can't unilaterally decide to move client monies to a new trust account or take firm forms. Most importantly, she should never try to remove client files, computer equipment, and the like off site in the middle of the night. In other words, no clandestine self-help. Unfortunately, this advice does need to be shared.



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JERRY CROUTER, an attorney at Drummond Woodsum, has 38 years of experience as a civil trial attorney and now focuses on serving as a mediator and arbitrator in commercial, construction, employment, real estate, probate, family law, malpractice and personal injury disputes. Jerry also serves as outside counsel for higher education institutions, advising them on a wide range of ever-evolving matters including student discipline, Title IX, faculty and staff employment, and tenure. He may be reached at [jcrouter@dwmlaw.com](mailto:jcrouter@dwmlaw.com).

## BOOK REVIEW

### Business and Commercial Litigation In Federal Courts (Fifth Edition)

By Robert L. Haig, Editor-in-Chief  
Thomson Reuters and ABA Section of Litigation  
Reviewed by Jerrol A. Crouter



In the Fall 2017/Winter 2018 edition of the *Maine Bar Journal*, I reviewed the 14-volume Fourth Edition of *Business and Commercial Litigation in Federal Courts*. In that review, I agreed with the conclusion of a prior *Maine Bar Journal* review of the Third Edition of the treatise, that it “has been justifiably recognized as the definitive treatise for the commercial litigator.” The recently issued Fifth Edition vastly expands upon both the Third and Fourth Editions. This 16-volume treatise (plus a 17<sup>th</sup> Volume Table of Cases and 18<sup>th</sup> Volume Tables and Index) includes updates and revisions to the 154 chapters found in the Fourth Edition, and adds 26 new subject matter chapters – many of which were not high on the legal radar screen five years ago. Among the new additions are chapters entitled Climate Change, Constitutional Litigation, Congressional Investigations, Shareholder Activism, Animal Law, Art Law, Valuation of a Business, and Virtual Currencies. The authors of the 180 chapters include 32 judges from the federal circuit courts of appeals, federal district courts and state trial courts. The breadth of subjects covered in the treatise is

extensive, but its greatest strength is that each chapter is a self-contained, A to Z guide to the subject matter.

The volumes contain chapters every practitioner would expect to see in a treatise on commercial litigation. Those chapters combine discussions of the Federal Rules of Civil Procedure, interpretive case law, and the substantive law. The rules-based chapters are particularly useful to practitioners in Maine, because the Maine Rules of Civil Procedure are similar in so many respects to the Federal Rules. Thus, Chapter 8, “The Complaint,” covers the basics: technical pleading requirements, heightened pleading standards under Rule 9, and the reasonable inquiry requirement of Rule 11. But what is most compelling about the treatise for the more experienced litigator is the content in each chapter that goes well beyond the basics. In Chapter 8, the authors discuss strategic concerns that should be considered in the drafting of the complaint. These include the relatively obvious, as in how to avoid a motion to dismiss, but also more subtle strategy considerations, including the importance of evaluating the impact of the complaint on non-traditional potential audiences, such as shareholders, competitors and the public.

Volume 4 is devoted to the pretrial process, from discovery through motions in limine. One chapter, entitled “Discovery of Electronically Stored Information,” emphasizes the importance of planning for document retention (*i.e.* litigation holds) as soon as litigation is anticipated. That same chapter addresses the sanctions courts impose for failing to retain and produce electronically stored information, including awards of attorneys’ fees arising out of discovery disputes and adverse inferences at trial.

The chapter on Motions In Limine includes an extensive discussion of the principles governing pretrial exclusion of expert testimony on *Daubert* grounds. As with all other chapters, it goes beyond the norm. For example, it illustrates how victory on a motion in limine can be undone at trial, by reference to an Eleventh Circuit decision involving a products liability case against the manufacturer of a wood chipper that was allegedly defective and unreasonably dangerous. The district court granted a motion in limine under Rule

407 of the Federal Rules of Evidence to exclude plaintiff's evidence of post-accident changes to the chipper. At trial on defendant's case in chief, defense counsel introduced evidence that the chipper was as safe as possible, thus opening the door for plaintiff's rebuttal evidence as to the post-accident design change. A single careless question undid the win on the motion in limine. These chapters, like every chapter in the treatise, include a section entitled "Practice Checklists," which provides practice pointers and checklists to assist commercial litigators in completing all the details of the litigation task at hand.

The treatise is equally compelling by including chapters on subjects that I did not anticipate seeing in a treatise on commercial litigation. Most litigators, if asked to define business and commercial litigation, would not think to include employment discrimination, since employment law is considered a subject unto itself. That is not the case with this treatise. Chapter 122, Employment Discrimination, discusses all of the categories of unlawful discrimination in the workplace. For purposes of this review, I focused on the chapter sections discussing the Equal Pay Act, because that is a currently trending topic in employment law.

The treatise describes the overlap between the EPA and Title VII, noting that Title VII remedies are broader, because they are not limited to recovery only of the difference in pay in situations where an opposite-sex comparator is paid more for equal work under similar working conditions. The treatise also notes the advantages of an EPA claim compared to Title VII, including a longer statute of limitations, no administrative exhaustion requirement, and no coverage threshold in terms of number of employees. Most importantly, the EPA does not require a plaintiff to prove that the pay differential was intentional discrimination on the basis of sex.

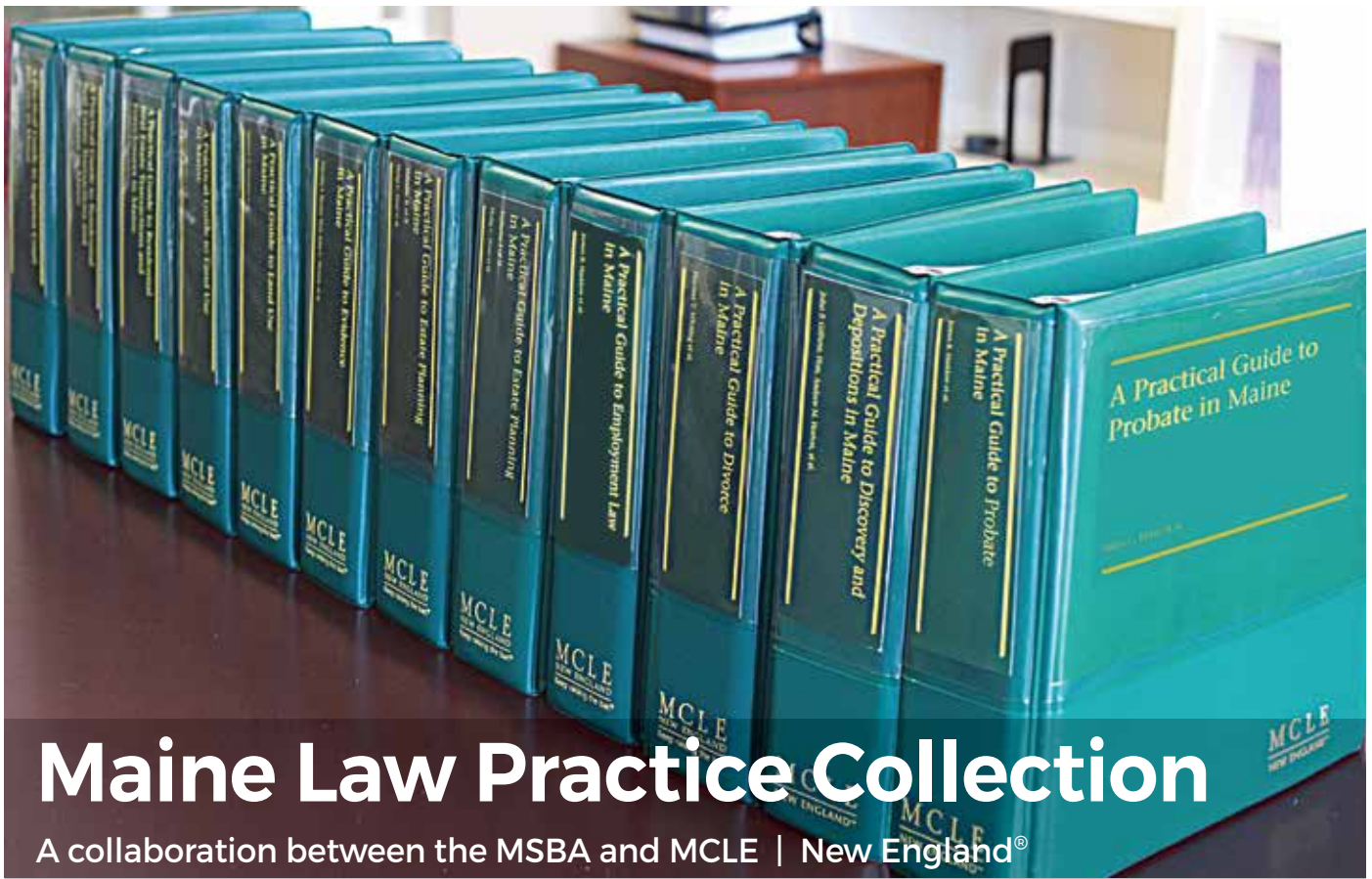
The chapter on Mediation explains how the skills that make an attorney an excellent trial lawyer may not serve to best represent the client's interests in the very different atmosphere of a mediation setting. The Mediation chapter is definitely worth a read by Maine practitioners, since mediation is mandatory in most civil cases in the Maine Superior Court. There is an extensive discussion of mediation skills and strategy, including in particular the importance of bringing creativity and a willingness to think outside the box to the mediation session.

It is also worth mentioning that I have noticed a trend in mediations away from joint sessions, as the parties and counsel are either focused on separating from the outset in order to get down to business or are concerned that a joint session will create defensiveness that is counterproductive. The Mediation chapter makes a strong case for a joint session, in all but the

rarest of cases, with presentations by all sides. It is the one opportunity for the plaintiff to speak directly to the defendant (or adjuster) and the one opportunity for the defendant directly to express empathy toward the plaintiff, without being filtered by the mediator. The chapter argues that hearing from your opponent directly is getting down to business. As to being counterproductive, that can be overcome by careful thought in advance about the style of delivering the message.

As noted above, the Fifth Edition includes 26 new chapters not present in the Fourth Edition. In reviewing the list of new chapters in the Foreword in Volume 1, I expected to be most interested in Artificial Intelligence, Climate Change, Space Law, or Virtual Currencies. As it turned out, and although all the new chapters address interesting topics, I was most intrigued by Art Law. There is substantial litigation breadth in the law pertaining to art, from authenticity and provenance, to stolen art, to auction house contracts, to copyright infringement. Court decisions involving works of art seem often to turn on the smallest of differences. For example, the Second Circuit held that Andy Warhol did not engage in fair use when using a photograph of the musician Prince to create 15 works – works that were similar in design to Andy Warhol's depictions of other celebrities, like Elizabeth Taylor, Marilyn Monroe and Mao Zedong. The decision was grounded on the conclusion that Warhol's Prince Series was not "transformative" of the photograph, but was simply too close a copy. Shortly thereafter, the Second Circuit decided that a website's exhibition of rock n' roll instruments fairly used a photograph of Eddie Van Halen playing his "Frankenstein" guitar. The Court concluded the exhibition was transformative, because the photograph's purpose was to show how Van Halen looks while performing, whereas the exhibition focused on the unique design of the guitar. Two cases with subtle factual differences leading to opposite results.

In thinking about how best to conclude by summarizing the value to Maine practitioners of the Fifth Edition of *Business And Commercial Litigation In Federal Courts*, I can do no better than the description of its editor-in-chief, Robert L. Haig, who writes: "[The authors] have given thoughtful consideration to the delineation and attainment of objectives and to the advantages as well as ramifications and pitfalls of various actions and inactions on the part of the commercial litigator throughout the entire course of a lawsuit. This is not only a law book that is valuable as a research tool and a source of legal knowledge and citations, it is an idea book filled with nuggets of wisdom and perspective that could only have been gained by years of experience in handling cases from the most simple to the most complex." I agree wholeheartedly with Editor Haig's description. The Fifth Edition is a must-have for every commercial litigator in Maine.



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## Meet New MAP Executive Director Kristin Murray-James

Kristin Murray-James, the new Executive Director of the Maine Assistance Program for Lawyers and Judges (MAP), is a 2012 graduate of the University of Maine Law School. For the past 10 years, Kristin has served as an Assistant District Attorney in Kennebec County, focusing primarily on domestic violence, sex crimes, and crimes against children. Practicing law was a second career for Kristin. In 1997 she completed her Master's in Nursing from Yale University and practiced as a Certified-Nurse-Midwife, caring for women and families in Maine. Kristin does not see her careers as a midwife and a prosecutor as disparate; instead, she describes her career change as a natural progression of helping people through difficult times in their lives. Her service as the new executive director of MAP is the next step in this evolution. Kristin cites the importance of supporting Maine's legal community in accessing resources to deal with the challenges facing Maine attorneys – stress, anxiety, depression, substance use, behavioral addictions, and life balance issues, as her primary motivation for taking on this new position.

Kristin lives in Wayne with her husband, Nate, and their daughters, Helen and Ruth. The *Maine Bar Journal* recently sat down with Kristin to welcome her and learn more about her.

### **What drew you to this position, and do you expect to make any changes to how MAP operates?**

When I saw the position advertised, I saw it as a great opportunity to help others in a different way. Bill Nugent, the retiring MAP director, has developed MAP over the past 13 years and has left me with a strong and thriving program. I intend to continue to grow the program and will be looking for input from Maine attorneys and Maine Law School students on what their needs are and how best to expand MAP to meet those needs.

### **What do you think attorneys need to know about MAP that they don't already?**

Probably what I didn't know – that it is a program that addresses all issues facing Maine lawyers, Maine Law School students, and applicants to the Maine Bar. It is not limited to matters of substance use or mental health concerns. Anything that is affecting an individual's practice of law, including issues happening in their lives outside of work, we may be able to help. The call to MAP is confidential.

### **What are the biggest challenges facing attorneys today?**

In the past 10 years, I have seen many attorneys facing overwhelm and burnout from the stress of practicing law. When these issues are left unaddressed, they rarely fix themselves. I see my job as helping attorneys to identify problems and the best ways to address them, so their work and personal life improve.

### **What is your proudest career moment?**

I have mentored many law school students and new prosecutors. It's a hard job with a steep learning curve. However, I believe that when you're learning something new, it's vital to build confidence. When I can successfully help someone see how great they are even though they do not know "everything" yet (none of us do), it's the best feeling.

### **If you weren't an attorney, what would you be?**

An art historian or an archeologist.

### **What is your favorite band or musical artist?**

I love the Beatles and Van Morrison. I am a child of the 80s, so I love Duran Duran, and I have a semi-secret obsession with Barry Manilow. I also love Pink and Alicia Keys – and Lizzo is super cool.

### **What is your favorite food?**

Ice cream (salted caramel and chocolate) from Mt. Desert Island Ice Cream.

**What is your favorite sports team?**

I grew up in NY and live in Maine, and I'm not answering that (Go Yankees!).

**What is your favorite website?**

Probably right now, the MAP website. I am looking for feedback on making some changes to it.

**Where was your last vacation?**

Ireland. The plan was to go for a week with my daughters and my Aunt Therese. Aunt Therese and I got Covid, my daughters took care of us, and we had to stay an extra 10 days. Not a bad place to have Covid.

**If you could live anywhere in the world, where would you live?**

On the ocean in Maine.

**What do you do to maintain a work-life balance and wellness?**

I "practice" work-life balance. Some days I am more successful than others. I find wellness outside – in the woods and on the ocean.

**What is something most people don't know about you?**

In my early 20s, I worked at a Moroccan zoo and cared for a baby chimpanzee. I think I am in a lot of Moroccan family's vacation photos from the early 90s.

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## A CONVERSATION WITH: SUSAN FAUNCE

*The Maine Bar Journal recently asked Susan Faunce, a partner at Berman & Simmons, about her life and experience practicing law in Maine.*

**What led you to come to Maine to begin or further your career?**

I was born in South Korea and lived there for the first five years of my life. We moved to California when we moved to the U.S. My dad was from Maine, so I lived here the majority of my life. After briefly living in Massachusetts and Morocco, I realized how much I love the way of life here in this state.

**Describe your proudest careers moment, or a moment that helped define who you are as a BIPOC lawyer.**

I don't believe I had one single defining moment. Instead, I have had a variety of interactions with clients, attorneys, and judges that influenced me throughout my career. Being surrounded by other women and lawyers from diverse backgrounds has helped me to appreciate the unique perspective I have as a BIPOC lawyer.

**If you weren't an attorney, what would you be?**

A doctor.

**What motivated you to become an attorney?**

My dad and mom divorced when I was young. At the time, my mom barely spoke English and was new to Maine. I went with her to all the court proceedings. My mom had a female attorney, and I was in awe. To me, being a lawyer meant that you had the power and responsibility of being a voice for someone in need.

**What book, website, or other resource would you recommend to MSBA members interested in BIPOC issues and why?**

Join the MSBA BIPOC Lawyers Section! Being able to connect with people and share good and bad experiences in the legal profession is a valuable resource.

**How would you say law school prepared you to deal with the issues of race and anti-racism issues in your career, if at all?**

Unfortunately, I don't think law school prepared me at all. I grew up in a culture of assimilating. Diversity was not discussed as it is today. When I first began my career, I was surrounded by mostly Caucasian men. I encountered some challenging moments being an interracial female trial attorney. I was told on more than one occasion that I "did not look like an attorney" despite being dressed professionally. I never knew how to respond to these kinds of statements other than proving myself through my actions. Fortunately, I work with some incredibly supportive attorneys at Berman & Simmons who encouraged me throughout my career.

**What might someone be surprised to know about you?**

I really enjoy hip-hop – '90s hip-hop in particular.

**How does your MSBA membership keep you connected to the legal community?**

MSBA, whether at a CLE, at the summer bar meeting or another event, allows me to interact with attorneys in the bar who I don't have occasion to meet while practicing day to day.

**What is anti-racism, and how would you encourage an attorney to engage in anti-racism?**

Anti-racism is about being open-minded and trying to understand and have compassion for people's unique backgrounds.

**What advice do you have for a new BIPOC lawyer considering a career in Maine?**

Don't be discouraged by the lack of diversity you may first perceive if you are new. If you take the time to make connections, you will discover that there are many people who want to hear your story.









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: ISABEL MULLIN

**In modern parlance, “till the cows come home” is meant to signify “a long passage of time,” but one origin story of the phrase traces its roots 16th century Scotland, where villagers would dance and carouse until the cows would return home for morning milking after grazing in the pasture through the night. As Isabel Mullin can attest, dairy farming has its moments of joy and satisfaction, but they are the product of long days filled with hard work, dedication, and consistent attention to detail. Following her service in state government (most recently serving as Chief of Staff for the Maine Senate Majority Office), Mullin decided to radically alter her career path after rediscovering her love of farming and nature during the coronavirus pandemic. Returning to work her family’s dairy farm in Kittery, Mullin is proof that sometimes, it is the dairy farmers, and not just the cows, who come home. Mullin recently spoke with the *Maine Bar Journal* about her interest.**

**Please tell our readers about your work as a dairy farmer.**

My farming background starts from when I was quite little. My grandfather and grandmother started a dairy farm in Kittery in 1947. My mother is the youngest of nine children and grew up on the farm. So, at a young age, I spent a lot of time with my grandparents. Of their 21 grandchildren, I was the most obsessed with the cows and farm life. I am a natural introvert, and it is kind of my safe space to spend time on the farm without too many people around.

When I was younger, I did 4-H and participated in the Cumberland County All-Star Dairy Club from ages 9-12, showing cows at the Cumberland County Fair. Later, I got more into local farming and horseback riding. As this transition occurred, I started becoming more interested in sports and academics. This is where I discovered my love of government, politics, and the law. So, in high school and in college, I focused on these newer interests right into my career as an attorney.

However, just prior to the pandemic I started missing the farm life that I loved in a way that was tangible to me. I got

a couple of goats and a couple of ducks just for fun during the pandemic. I then ended up moving to a hobby farm in York County that is owned by my friend’s mother. I helped on this farm. I would come home late after long hours at the legislature and pull a lamb out of an ewe during lamb season. The more I did things like this, the more I realized that I felt fulfilled on the farm.

Eventually, I heard that my family farm needed more help, so I got in touch with my uncle and aunt. They embraced the idea of me coming back to the family farm to help. So, after the legislature adjourned, I packed up my desk and started full time on the farm a week later.

**What is the name of the farm started by your grandparents back in 1947?**

It's Rustlewood Farm. When my grandparents took over the property, it was overgrown and the wind was rustling through the trees. That is where the name came from, but they also display the family name, the Johnson Farm. It was once one of two dozen farms in Kittery, but now it is the only remaining commercial dairy farm in town.





**How many cows do you have at the farm?**

There are 75 milking cows, and they are currently raising about the same number of calves and heifers.

**Does the farm focus primarily on dairy farming?**

Yes. It's funny that you ask. I just attended a conference in Hartford, Connecticut with Agri-Mark, which is the dairy cooperative we belong to. Agri-Mark produces Cabot cheese and McCadam cheese using milk from farm families that are part of that cooperative. At the conference, there was a lot of discussion about farm diversification and non-dairy sources of income. I think that the younger generations at our farm would love to do more with the resources we have here. My cousin is farming vegetables on the land, but as part of a separate business, Greenlaw Gardens.

**Does most of your farm's milk go to the cooperative?**

Yes. We sell all our milk wholesale to the cooperative. They pick up the milk every other day. Your Cabot cheese or other Cabot products may have some milk from Kittery, Maine.

**Are there special breeds of cow that you have that are particularly good for milk?**

There are two main dairy breeds in the U.S. The first is the Holstein cow, which is the standard black and white cow that is known for high milk yields. The second is the Jersey cow, which is a much smaller cow compared to the Holstein but has a higher butter fat and protein ratio in its milk. There are other breeds that are more specific to farmer preference or niche markets. And crossbreeding dairy cows has become more popular too.

**Do you do know roughly how many gallons you might yield from a cow per day?**

The unit of measurement that we use is in pounds. Some of our best cows are giving up 100 pounds a day consistently and 125 pounds a day is not unheard of on some farms with strong nutritional management.

**How old were you when you first milked a cow?**

I was probably around 9 or 10 years old – maybe a little bit younger.





**How have the methods for milking at the farm evolved since that time?**

We do our milking in a tie-stall barn, moving the milking machines along with us as we go, rather than moving the cows through as you would in a milking parlor. We use about eight milking machines, rotating them through as we go down the barn and doing a thorough cleaning after each milking. Some farms are even using robots for all their milking, so a lot of their labor is focused on how to maintain and fix a robot more than it is on how to milk the cow.

**What time do you start your day on the farm?**

I don't do the morning milking, so I usually arrive on the farm between 7:30 and 8:30 a.m. I usually leave the farm between 6:30 and 7:30 p.m.

**That is a long day. Do you collapse at the end of the day or are you energized?**

During the first few weeks, I was tired. A desk job takes far fewer calories. I am probably taking about 20,000 steps or more each day on the farm. In recent weeks, I have adjusted to the physical challenge. I still have an hour commute to get home, but when I walk my two dogs at home it tends to bring me back to life.

**What are some of the challenges facing dairy farms in this era?**

There are many. One of the biggest is that dairy farmers in general need to educate consumers about the local industry and where their milk and dairy products come from. In general, consumers have been separated from the production of the food they consume. It is important to help them understand how food is produced and that their local dairy farmers care deeply about their cows. We spend our entire day caring for our cows, monitoring their health and nutrition, and cleaning up after them. Another challenge is planning. On a 75-year-old farm, there is a need for major infrastructure updates, but to envision the farm continuing 10 or 20 years into the future, it is important to successfully operate the farm in the present with existing infrastructure and resources.

**Working full time on a family dairy is a dramatic shift from working in the legislature in a legal capacity. What have been some of the rewards of making this change?**

I benefit from being active and moving around. For me, farming feels like it is in my blood. I'm in my happy place at the farm with animals, providing their daily care. I enjoyed doing legal and policy work in the legislature because I felt like I was contributing to the future of the state. But now I



am focusing on one farm and its future. It is challenging and rewarding on many levels. It also has given me a second wind because it is a new challenge that I enjoy.

**Is there a particular part of the day that's like a favorite moment for you?**

I really like taking care of the calves. They are adorable and it is meaningful for me. My cousin lives at the farm with her two daughters, who are about the age I was when I really started getting involved in 4-H. They are invested in the doing the calf work too, including bottle feeding or making sure the hay feeders are filled. It is nice to work with them and get to teach them about the farming. It reminds me of the experience that I had growing up.

**Do you find that the different cows have different personalities?**

A hundred percent; they do. I also noticed a difference in the cows based on how much attention they get as a calf. The more engagement that we have with them, the more friendly they are as they age and enter the milking process.

**Do you ever have a situation where it is an open question as to who the boss is, the cow or the dairy farmer?**

They are always the boss. They are big animals, so you really do

have to be careful. Dairy farming is one of the most dangerous professions out there because you are working with a large unpredictable animal. If you are smart, you will stay calm. It is rewarding to have respect for the animal and to receive it in return.

**Has there been any overlap between your two worlds, the legal world and the farming world?**

I would say there has been more overlap between the policy world and the farming world so far. Legal issues come up for farmers, including regulations, land use, and other items. My legal experience has been helpful, and I think we can leverage it as we think toward the future. I do think there are many similarities between farming and the legal profession. They both require true dedication and hard work. I know a lot of dedicated lawyers who came from farming backgrounds. Many credit their work ethic to their upbringing.

**Any notable experiences since shifting to full time dairy farming?**

There are a few, but one involved a large rock getting stuck in the auger of our manure spreader. This required some troubleshooting and brainstorming on how to remove the rock under very challenging circumstances. After a lot of digging and drilling holes in the rock, we were able to lift it out with

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► Eric Columber, Columer Law, 2019 President of the Maine State Bar Association

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bolts and the help of a payloader. It is a world of change from the beautiful halls of the State House.

**Are there any aspects of dairy farming that you find particularly gratifying?**

I think what is great about farming for me is that a farmer is kind of the ultimate steward of the land. The farm is a beautiful place. We are fortunate that the Kittery Land Trust purchased an easement to preserve the farm for agricultural purposes back in 2014. So, while we are lucky to continue to operate as a family farm today, it is nice to know that it will be preserved as agricultural or open space land. As a steward of the land, I feel fortunate to walk around the fields and the farm, knowing we are preserving space for current and future generations.

**Could you share your thoughts on the importance of locally sourced food?**

Recently, there has been a lot of talk about the supply chain and challenges that we have faced recently because of the

pandemic. Then in terms of climate change and greenhouse gas emissions, small local farms often have less of an impact on the environment, including reduced transportation. Also, when you are dealing with a local farmer, you also can be confident in how the food has been grown or raised. You can observe and ask questions about how they are producing the food that you are consuming and putting in your body. Your local farmer takes care of the land and our animals.

**What is the best advice you have ever received?**

There is a quote that is often attributed to Henry Ford that if you work a job you love, you never work a day in your life. I think that is my approach. I have had different jobs where I reached a point where I felt I had to make a change. Farming is more of a lifestyle than a job. I truly love the lifestyle and have found it has been very rewarding throughout my life.

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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](mailto:dmurphy@bernsteinshur.com).



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Rural areas often lack basic infrastructure such as public transportation, social services like mental healthcare, and broadband. Data from most recent census reveals that Maine is the country's most rural state with 61.3 percent of residents living in a rural area and a rural land mass of 98.8 percent.<sup>1</sup>







MICHELLE 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](mailto:mdraeger@justicemaine.org).



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## Traversing the Barriers to Justice in Rural Maine

In a geographically disperse state like Maine, there are many fundamental barriers to justice in rural communities. Rural areas often lack basic infrastructure such as public transportation, social services like mental healthcare, and broadband. Data from most recent census reveals that Maine is the country's most rural state with 61.3 percent of residents living in a rural area and a rural land mass of 98.8 percent.<sup>1</sup> Further, the Muskie School of Public Service Maine Rural Health Research Center notes Maine's rural counties also have a higher concentration of older adults and veterans with lower levels of education attainment who are more likely to live in poverty.<sup>2</sup>

Adding to the complexities, legal deserts are prevalent in rural communities throughout the United States and Maine is no exception. "Legal deserts emerge when areas cannot support a market for general legal services. In rural America, salaries may be half what a new attorney could expect in a metropolitan area, and as a result rural attorneys are retiring faster than they can be replaced."<sup>3</sup> In many Maine counties, lawyers are aging, and many retire without anyone taking over their practice. Attorney Ryan Rutledge from Skowhegan laments, "There aren't that many attorneys to begin with and the attorneys that are here really are from a certain generation that isn't going to be able to do this for very much longer – or want to do this for very much longer." Indeed, at age 31, Rutledge is the youngest attorney in his firm and the next youngest is approximately 40 years older than him.

Deirdre Smith, Professor of Law at the University of Maine, agrees. "In many communities the first challenge is finding a lawyer and the second is finding the right lawyer. The law is diverse and the lawyer in your town may not have the

expertise, or the availability, and they also may have conflicts." One of the challenges the Smith has often heard is "in these very small towns if you are trying to address something like a child custody matter or a real estate dispute 'the attorney' may have a conflict because the other side has already reached out to them. Finding the lawyer who is going to be able to help you – who has availability, expertise, is affordable and in whom you can confidence can be a challenge. For some people, it can involve traveling hours to work with an attorney or having almost entirely remote relationships."

According to the 2020 ABA Profile of the Legal Profession<sup>4</sup>, Maine has three lawyers per one thousand residents. Of Maine's 4,008 lawyers in sixteen counties, 3397 of them are concentrated in five counties (Androscoggin, Cumberland, Kennebec, Penobscot, and York). Piscataquis County has the lowest number of lawyers with seven. This is the second lowest county in all of New England, second only to Essex County, Vermont.

Moreover, more than thirty million Americans live in rural areas where there is no broadband infrastructure, and it is estimated that at least 83,000 households in Maine still cannot get broadband access.<sup>5</sup> While technology is often praised and presented as a solution to geographic access issues and lacking legal resources in rural areas, it can often be an additional barrier to justice.

In some respects, the Covid-19 pandemic has served as a bridge to those geographically dispersed in far-reaching areas of the state as all process, including legal proceedings, have moved us all online over the past three years. Smith says "the pandemic on the one hand it has helped accessibility in certain



**"In many communities the first challenge is finding a lawyer and the second is finding the right lawyer. The law is diverse and the lawyer in your town may not have the expertise, or the availability, and they also may have conflicts."**

ways, without question, everyone has developed a comfort level with doing remote representation whereas it just didn't happen before but on the other hand it has underscored the degree of isolation that some people may have. We work with quite a few low-income folks in rural areas and their phone is their computer. They don't have any other computer, so they are doing zoom court on the phone, interviews and meetings with their attorneys on the phone, it's all really happening through the phone"... "there are limitations of the phone in terms of reading court documents, signing court documents, doing court hearings, and it's very hard to navigate google meet or zoom for your court hearings if you get stuck in the waiting room or you don't have a consistent signal."

Incoming Director of the Cumberland Legal Aid Clinic (CLAC), Molly Butler-Bailey, started law practice as a defense attorney in Oxford County. During the pandemic, she frequently had to talk to people over Facebook and says: "the phone isn't practical for a lot of people that can't afford to keep their phones on, and transportation is just the biggest barrier. A lot of people are too poor to have a car or have a way to get to a lawyer's office, to the courthouse or to services that they need. If you are in family court and the judge wants you to do counseling, that can be almost impossible where it's just not available and they have no way to get there."

While many love the idea of rural practice and the experience of working in a small-town practice, the practical realities create challenges. Butler-Bailey notes the significant barriers associated with starting or operating a practice in a rural environment including professional isolation, lack of mentorship, and the cost of setting up a practice. "It is very hard to open a law practice and challenging to operate a law practice without support staff," says Bailey. She says "It is really, really hard. At first, you need capital just to start. Second, if you are doing, for example, indigent defense where you don't make enough money to pay for an office or for support staff. There is also an incredibly significant lack of mentors out there right now, especially in the rural counties, and if you are starting out fresh out of law school, you really

need that support." Larger firms that have resources to provide mentorship and a steady paycheck are few-and-far between in rural areas and smaller firms may not have the capacity to bring on an associate. Rutledge agrees that staffing is a challenge. "It is hard to find people that are reliable let alone people that have the experience necessary to do the type of work that we do. That is a constant struggle."

Making matters more challenging, lower salaries in rural areas are not the only barrier to entry for young lawyers when we consider the enormous debt load that law school graduates carry upon graduation. According to the 2020 ABA Profile of the Legal Profession, as of 2016, the average cumulative law student debt was \$145,500, rising 77 percent from the year 2000.<sup>6</sup> This debt was also disproportionate among racially diverse graduates with white students averaging \$100,510 of debt, Hispanic students averaging \$149,573 and Black students averaging \$198,760. The average starting salary for lawyers in Maine is \$80,450<sup>7</sup> and, as of 2018, the national average for entry level salaries in civil legal services at \$48,000. Of the lawyers surveyed, 82.2 percent reported choosing a job that qualifies for loan forgiveness instead of a job they really wanted and 62.8 percent chose a job that pays more instead of a job they really wanted. Less than 1 percent of 2019 graduates went into solo practice and 8 percent went into public interest.

Addressing significant student loan debt and low salaries upon entry for lawyers wanting to practice in rural areas becomes paramount if we are to effectively address the fundamental barriers to our rural neighbors in need of legal assistance. Put simply, it is difficult to ensure access to justice if there are too few lawyers providing representation.

### **Some Steps in the Right Direction to Address these Barriers**

#### ***Northern Maine Rural Practice Clinic***

Smith says some of these barriers are behind the thinking of the University of Maine School of Law initiatives that help support students and alumni to go into rural practices. This

includes keeping the tuition as low as possible and providing opportunities to develop relationships while they are still in law school. In Maine, Smith sees an estimated 60-70 percent of graduates choosing to stay to practice after graduation and observes that a key incentive is keeping student debt low. This requires continuing state support for the law school to help them keep tuition rates reasonable and she would like to see a state-based loan forgiveness program.

Smith says, “We need incentives to encourage and help new and younger lawyers to come into practice in these areas. Our civil legal aid providers are excellent training grounds for new attorneys and increased funding for these offices to expand their work into rural counties to staff and re-open office locations will expand the availability of lawyers and gets attorneys into our rural communities. If existing attorneys that are nearing retirement have some support as well that can help pave the way for succession planning instead of closing a practice. Addressing these problems will require both collaboration and resources, including state resources, as an investment in this as a priority in our communities to help ease the crisis of unrepresented litigants.”

This spring, the legislature approved LD1924 which will establish a Rural Practice Clinic pilot project. In collaboration with the University of Maine at Fort Kent, the law school will assist in developing this clinic in Aroostook County as a three-year pilot project similar to how CLAC operates. The broad vision, according to Smith, “is to have the student attorneys live, practice and study in “the county,” likely two at a time, for the semester or the summer.” The University of Maine Fort Kent will provide both the space for the clinic and housing for the students. Like CLAC, there will be an onsite supervising clinical professor providing close mentorship and support to the students who are actively representing clients under student practice rules. As the program is developed, stakeholders are considering what the areas of acute unmet needs are and determining if they are a good fit for the program. The Rural Practice Clinic will handle a diverse range of case types and students to spend most of their time doing clinical work while also enrolling in one or two law school classes remotely.

Toby Jandreau, an attorney practicing in Fort Kent who will be providing mentorship to the Rural Practice Clinic, is looking forward to showcasing how well attorneys can do in rural Maine. He believes that the quality of life in more rural areas of the state should be celebrated despite the challenges. He acknowledges, “It is a different pace of life and it’s worth it.” He wants to grow the population of lawyers in rural areas by mentoring and showing them that practicing with the Rural Practice Clinic “is a pathway home.”

Rutledge, a former Rural Clinic Fellow of CLAC is proof of the success of clinics like these. He says, “these rural practice fellowships are so vital, and I would consider it successful. I mean, I am here three years in [to practice]. I did two years of it when I was in school, and it worked. It exposed me to various parts of the state, different practitioners, it taught me who I wanted to be and who I didn’t want to be, and it showed me what life I could have if I chose to live and work in an area like this. Mentorship is tough, but the rural practice fellowship makes that a lot easier.”

If these programs prove to be successful long term and expand to new communities, continuing resources will be needed to underwrite the program once the pilot funding expires. As the Rural Practice Clinic pilot program evolves, Maine Law will assess and evaluate necessary resources to sustain and grow this program in the long term. They will also be looking for ways to replicate this program in other counties where there is a community in need within a close distance of a courthouse, the support of the local bar and a campus or community partner collaboration.

### ***Student Loan Repayment Assistance***

To address the growing burden of student loans on young lawyers, there has been a small patchwork of student loan repayment assistance programs both from the federal government and the non-profit sector, including byzantine federal loan forgiveness programs, private foundation programs, and university administered programs. However, these programs, while well-intended, were not uniformly available to all attorneys and often required employment in the non-profit sector. A new option to benefit more young lawyers

**If these programs prove to be successful long term and expand to new communities, continuing resources will be needed to underwrite the program once the pilot funding expires. As the Rural Practice Clinic pilot program evolves, Maine Law will assess and evaluate necessary resources to sustain and grow this program in the long term.**

If the state wants to encourage folks to come out and do this type of work in these types of areas, people need financial incentives to do that because otherwise what is stopping you from getting a more lucrative position in a more populated area which is exactly why we are in the situation we are in now.

and their employers (and other professionals with student loan debt) is now available. Section 2206 of the CARES Act offers greater relief providing that employer-provided student loan repayment is now a tax-free benefit to employees under Section 127 of the Internal Revenue Code. Effective through 2025, employers can make contributions of up to \$5,250 per employee annually toward eligible education expenses, like tuition or student loan assistance, without raising the employee's gross taxable income. In addition to the employee not incurring taxes on these funds, the employer also gets a payroll tax exclusion on the funds.<sup>8</sup> While set to expire on Dec. 31, 2025, this benefit could be extended if Congress votes to pass the Employer Participation Act<sup>9</sup> which calls for loan repayment assistance payments (LRAP) made by an employer to an employee or lender to become *permanently* tax-free.

This LRAP benefit is laudable and has great potential for addressing legal deserts in rural communities because it is available to all attorneys with student loan debt, not simply those working for non-profits. This is important because it will assist in incentivizing attorneys to join or start rural legal practices, which will in turn, provide critical legal infrastructure for geographically disbursed Mainers in need of legal assistance.

#### ***Access to Justice Tax Credit***

Another incentive for attorneys to start or join existing rural legal practices is a pilot Access to Justice Tax Credit (ATJ Tax Credit) approved by the legislature and recently implemented by the Maine Justice Foundation. This program was enacted by the Legislature to encourage lawyers to provide services to underserved areas of our state.<sup>10</sup> Starting this summer, the program will authorize five lawyers per year who practice in underserved areas and maintain eligibility, to claim a \$6,000 state income tax credit per year through 2027. To be eligible, attorneys must commit to practicing law in an underserved area for at least five years, must be rostered by the Maine Commission on Indigent Legal Services to accept court appointments to represent clients in an underserved area, and must agree to preform *pro bono* legal services in an underserved area. This program is yet another way that the legislature and other access to justice stakeholders across the state are attempting to bridge the gap in civil legal services available to those in need in rural communities.<sup>11</sup>

A big proponent of the ATJ tax credit and other financial incentives like loan repayment assistance, Rutledge says, "It directly addresses one of the components that I think is prohibitive for folks that are thinking about living and working in a rural community. If the state wants to encourage folks to come out and do this type of work in these types of areas, people need financial incentives to do that because otherwise what is stopping you from getting a more lucrative position in a more populated area which is exactly why we are in the situation we are in now."

As we collectively work to address the barriers to justice for underserved populations in rural Maine with the creation of these innovative programs, creativity and resources will be needed to sustain and geographically expand them going forward.

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## ENDNOTES

1 <https://worldpopulationreview.com/state-rankings/most-rural-states>

2 A Statewide View of Rural Health Maine Rural Health Profiles. *Muskie School of Public Service Maine Rural Health Research Center | Maine Health Access Foundation/University of Southern Maine*, September 2016, p. 8.

3 Equality Before the Law: Ending Legal Deserts in Rural Counties, by Aburiyeba Amaso. *Georgetown Journal on Poverty Law & Policy*, November 3, 2020.

4 2020 ABA Profile of the Legal Profession, American Bar Association. <https://www.americanbar.org/content/dam/aba/administrative/news/2020/07/potlp2020.pdf>

5 While availability (or lack thereof) to broadband poses a significant barrier to access to justice in rural communities in Maine, it is a topic requiring more thorough discussion than space allows here. As the Maine Broadband Coalition develops a strategic plan for broadband infrastructure across the state, we look forward to digging into analysis of it in a

later article.

6 2020 ABA Profile of the Legal Profession, American Bar Association.

7 US Bureau of Labor Statistics - <https://data.bls.gov/oes/#/occGeo/One%20occupation%20for%20multiple%20geographical%20areas>.

8 <https://www.forbes.com/sites/robertfarrington/2021/03/10/student-loan-repayment-assistance-is-becoming-a-popular-benefit/?sh=6b93c7b259ca> and <https://thecollegeinvestor.com/33583/employer-student-loan-assistance-tax-free/>

9 H.R. 1043 116th Congress (2019-2020) - *Employer Participation in Repayment Act of 2019*.

10 36 MRSA § 5219-ZZ.

11 For more information on the Access to Justice Tax Credit program, please visit <https://justicemaine.org/uncategorized/maine-justice-foundation-seeks-applications-for-the-access-to-justice-tax-credit-program/> <https://justicemaine.org/uncategorized/maine-justice-foundation-seeks-applications-for-the-access-to-justice-tax-credit-program/>.



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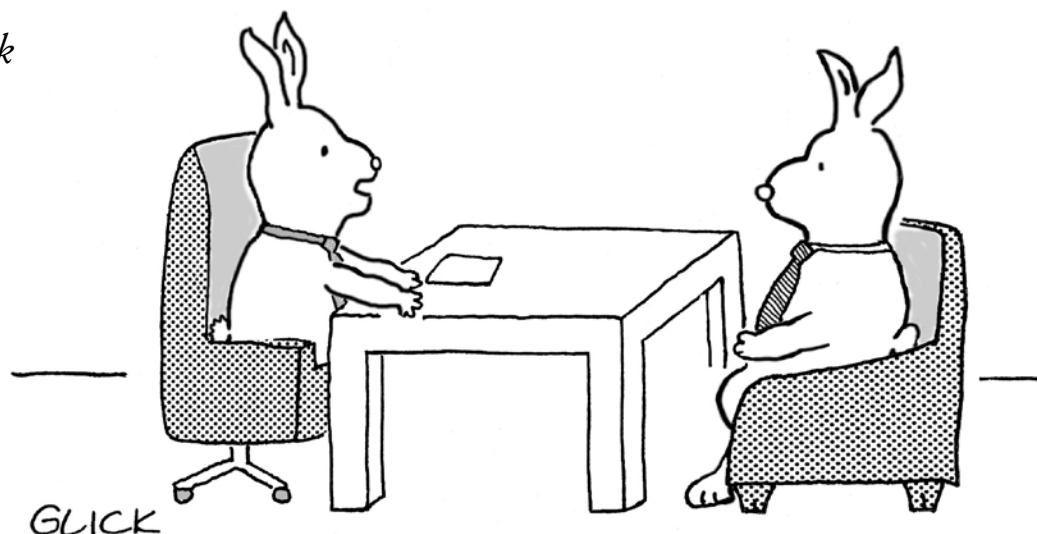
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"Science, not to mention everyday thought, is influenced by metaphors. Why shouldn't law be?"  
- Judge Benjamin Cardozo





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](mailto:wanderer@maine.edu).

## Eloquent Imagery: The Art of Persuasion Part II

Metaphor has been recognized as essential to human language since the time of the ancient Greeks. Often recommended for persuasive writing, its use has also been criticized at times. Aristotle saw metaphor as a common feature of language, but warned that metaphors should be used carefully, “with a sense of their appropriateness for the occasion.”<sup>2</sup> Nevertheless, Aristotle acknowledged that anyone who truly mastered the use of metaphor exhibited the signs of genius because “a good metaphor implies an intuitive perception of the similarity in dissimilars.”<sup>3</sup>

The word “metaphor” derives from the Greek verb “*metapherein*,” which means “to transfer.”<sup>4</sup> The transference in metaphor involves giving a name to one thing that belongs to something else.<sup>5</sup> Aristotle considered metaphor to be a highly useful stylistic device because of its ability “to make what is said seem unusual and, thus, more striking.”<sup>6</sup> Aristotle valued clarity, but also considered distinction of style to be very important. Because metaphor lent both clarity and distinction, he deemed

it the only poetic device available to the writer of prose.<sup>7</sup>

Metaphor has long been a staple of United States Supreme Court jurisprudence. Since Thomas Jefferson first used a metaphor to describe the religion clause of the First Amendment as “building a wall of separation between Church & State,” the Court has used metaphors to clarify and illuminate difficult, abstract concepts.<sup>8</sup> Using metaphoric reasoning, Justice Douglas, writing for the majority in *Griswold v. Connecticut*,<sup>9</sup> located a right to privacy in the penumbral area formed by emanations from specific guarantees in the Bill of Rights.<sup>10</sup>

Many metaphors, like Jefferson’s “wall of separation,” are merely intended to explain a legal doctrine. Some metaphors, however, actually express doctrinal law, like Justice Douglas’s “penumbra,” establishing a right to privacy not actually enumerated in the Constitution. Doctrinal metaphors are powerful because they describe substantive legal rights not in literal terms, but in metaphoric terms, giving “names to nameless

things.”<sup>11</sup> Recognizing the potential for danger in doctrinal metaphors, Benjamin Cardozo warned, “Metaphors in law are to be narrowly watched, for starting as devices to liberate thought, they end often by enslaving it.”<sup>12</sup>

### Using Metaphors in Legal Writing

Despite the concerns expressed about using metaphors in Supreme Court opinions, attorneys can use metaphors safely and effectively to enhance their legal writing. In fact, it would be impossible not to use them because so many abstract ideas are commonly described as people, plants, and other material objects. Ideas can be “fertile,” “seminal,” “barren,” “resurrected,” “planted,” “harvested,” “packaged,” “bought,” “sold,” and have “value” in the “marketplace of ideas,” including the “world of law.”<sup>13</sup>

Communication would hardly be possible without a common understanding of the meaning of such metaphors as light and dark, hot and cold, and bridges and walls. When your mood is light, you are happy; when it is dark, you are not. Heat and warmth represent passion and friendship; cold represents lack of emotion or unfriendliness. Bridges lead to connection; walls force separation.

In addition to the “wall of separation” and “penumbra” metaphors mentioned above, the language of the law includes countless other metaphors that communicate abstract legal concepts, including “chain of evidence,” “long-arm statute,” “forum shopping,” “parent corporations,” “piercing the corporate veil,” “lemon laws,” “balancing tests,” safe-harbor provisions,” and “sunset provisions.”<sup>14</sup>

Lawyers use metaphors effectively when they compare a new, abstract concept to a concrete image with which they know their reader will be familiar. For example, in a brief, an attorney could describe a spiteful supervisor as a “tyrant” or “schoolyard bully,” a con man as a “wolf in sheep’s clothing,” a tense situation as a “storm brewing” or a “ticking time bomb,” and a work environment as “heaven” or “hell.”<sup>15</sup> Every judge and attorney knows what is meant by “the fruit of the poisonous tree.” Attorneys can base their metaphors on almost anything from the real world that will help their readers understand the picture they are painting as they describe the facts or the law in their writing.

### Familiar Narratives, Parables, and Allegories

Metaphors are particularly powerful when they are based on familiar narratives. In a dissent, New Jersey Supreme Court Justice Alan Handler used a reference to the Trojan horse when arguing that a sentencing statute that seemed innocent on its face was racially discriminatory in its application. According to Justice Handler, “The introduction of victim-impact evidence unacceptably exacerbates the racial disparities evident in capital

sentencing. . . . Victim-impact evidence will be the Trojan horse that will bring into every capital prosecution a particularly virulent and volatile form of discrimination.”<sup>16</sup> Like the story of the wolf in sheep’s clothing, most people are familiar with what happened in Virgil’s epic Greek poem, *The Aeneid*, when the Trojans wheeled a massive wooden horse behind the walls of its city at the end of the Trojan war. Justice Handler equates the victim-impact statute—“with its seemingly benign language and its hidden destructive capacity”—to the famed wooden horse filled with Greek soldiers, bent on destruction.<sup>17</sup> Because the story is so familiar, he only needed to make a brief allusion to make his point.

Extended metaphors like parables and allegories are especially effective because they relate to everyday life events that are readily understandable, even to those outside the legal community. My favorite example comes from Justice Sparling’s concurrence in *Coyle v. Texas*, in which the Court of Appeals overturned Coyle’s conviction, finding that his Fifth Amendment rights against self-incrimination had been violated by the prosecutor during the trial.<sup>18</sup> Although Justice Sparling agreed with the opinion, he wrote separately, arguing that the case law in Texas regarding self-incrimination had gradually changed so much over time that it no longer adhered to the United States Constitution.<sup>19</sup> He described the problem with the evolving nature of the law, as follows: “I liken this area of law to the allegory of the woodcutter who attempted to cut firewood lengths. Instead of measuring each successive log to the original, he measured it to the log cut immediately before. At the end of the cord, he discovered that the last log bore no resemblance in length to the first.”<sup>20</sup> Using this allegory, Justice Sparling implied, “Just as each successive log was measured not against the original model log, but against the immediately preceding cut log, each successive case in the area of self-incrimination in Texas was based not on the original constitutional language, but on the immediately preceding case in this area.”<sup>21</sup> As a result, the most recent precedent was no longer in line with the law established in the original case.

### Emotion, Annoyance, and Entertainment

As Michael Smith states in *Advanced Persuasive Writing*, an “apt metaphor can greatly enhance the emotion generated in readers.”<sup>22</sup> Professor Smith provides the following example: “Each oppressive practice is one wire in a birdcage; while no one wire could prevent the bird’s escape, the wires woven together make a thoroughly effective prison.”<sup>23</sup> The metaphor of the birdcage advances a highly emotional argument regarding the cumulative effect resulting from numerous individual acts of oppression.<sup>24</sup> When a metaphor like this engages a reader’s emotions, it touches on “*pathos* (i.e., passion and emotion), *ethos* (i.e., credibility), and *logos* (i.e., logic and legal reasoning),” which form the three pillars of persuasion.<sup>25</sup>



As effective as metaphors can be, their overuse can annoy readers. Also, as Aristotle warned, metaphors should be used carefully with a sense of their appropriateness for the occasion. Furthermore, mixed metaphors can be confusing and distracting. If a writer begins with a metaphor about hitting a home run, he should not end with a reference to space travel. Not only do poorly written metaphors lack explanatory value, they may alienate the reader who simply does not “get it.”<sup>26</sup>

Usually, however, readers appreciate the inclusion of effective metaphors in otherwise long, tedious documents they must read and understand. Making the mental connection between two seemingly dissimilar things is often pleasing to a reader. “This charming and entertaining effect can make the reader more receptive to the brief; [o]nce the reader falls into this positive and receptive mood, the writer’s substantive point will be more welcome.”<sup>27</sup>

Ultimately, deciding whether to include a metaphor in a legal document will depend on whether that particular metaphor will help to explain the writer’s analyses and support her position. To be effective, it must relate to everyday life or reference a well-known narrative. Used appropriately and effectively, metaphor can be a powerful tool of persuasion. Using metaphors can help make complex legal principles understandable by explaining them in human terms to which everyone can relate. Metaphors are based on universal experience and, as such, according to Robert Frost, “[A]ll thinking is metaphorical.”<sup>28</sup>

## ENDNOTES

- 1 Berkley v. Third Ave. Ry. Co., 155 N.E. 58, 61 (N.Y. 1926).
- 2 J. Christopher Rideout, *Penumbra Thinking Revisited: Metaphor in Legal Argumentation*, 7 Legal Communication & Rhetoric: JALWD 155, 155 (2010).
- 3 *Id.* at 155-56 (quoting Aristotle, *The Poetics* (Ingram Bywater trans., The Modern Lib. 1954).
- 4 *Id.* at 59.
- 5 *Id.*
- 6 *Id.*
- 7 *Id.*
- 8 Julie A. Oseid, *The Power of Metaphor: Thomas Jefferson’s “Wall of Separation between Church & State,”* 7 JALWD 123, 124 (2010).
- 9 381 U.S. 479 (1965).
- 10 *Id.* at 484.
- 11 Oseid, *The Power of Metaphor*, *supra* n. 8, at 130.
- 12 Berkey, 155 N.E. at 61.
- 13 Raymond W. Gibbs, Jr., *Embodied Metaphor in Persuasive Legal Narrative*, <https://cambridge.org/core>.

- 14 Jacob M. Carpenter, *Persuading with Precedent: Understanding and Improving Analogies in Legal Argument*, 44 Cap. U. L. Rev. 461, 469 (2016).
- 15 *Id.* at 471.
- 16 Michael R. Smith, *Metaphoric Parable: The Nexus of Metaphor and Narrative* 76 (2018) (quoting *New Jersey v. Muhammad*, 678 A.2d 164, 203-205 (N.J. 1996) (Handler, J. dissenting).
- 17 *Id.* at 77.
- 18 Coyle v. Texas, 693 S.M2d 743 (Tex. App. 1985).
- 19 *Id.* (Sparling, J., concurring).
- 20 *Id.*
- 21 Gibbs, *supra* n. 13, at 93.
- 22 Michael R. Smith, *Advanced Legal Writing: Theories and Strategies in Persuasive Writing* 199 (2d ed. 2008 (quoted in Carpenter, *Persuading with Precedent*, *supra* n. 14, at 476-77)).
- 23 *Id.* at 477.
- 24 *Id.*
- 25 *Id.*
- 26 *Id.* at 478.
- 27 *Id.* (quoting Smith, *supra* n. 22, at 234.)
- 28 Robert Frost, *Education by Poetry*, in *Collected Poems, Prose, & Plays* 717, 720 (1995).

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## How to Make Your Life More Manageable

A major source of stress for attorneys is the torrent of personal and professional improvement advice out there that just adds to the pressures of practicing law. Sifting through all the self-help books, blogs, podcasts, webinars, and on and on is time-consuming and tiring and just makes life and work more complicated.

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**View your life as a work in progress.** Predictable adult development – from picket fences to gold retirement watches – is no longer the norm. Nothing is certain now except that the pace of American life will continue to quicken, and options for personal discovery and transformation will keep snowballing. This is the age of reinvention, and you will probably leave a long “to do” list behind when you die. Once you accept that you will never get “it all” done, that each new horizon will bring new goals and dreams, you will begin to stress less and enjoy the ride more.

**Put self-care at the absolute forefront.** Can I say this enough? You need to be genuinely rested and awake with all your parts in good working order to cut through the chaos of modern life and work and see your way to genuine enjoyment. This means making sure that you get enough sleep, eat reasonably well, exercise sufficiently, protect yourself from people and environments that drain you, and keep your mind adequately nourished. This also means breaking away from work whenever necessary to take the edge off, have fun, and recharge yourself. The advantage of taking full responsibility for your physical and mental health is that you'll be well-anchored with your wits about you as the cacophony of American life and lawyering continues to build.

**Make the most of what you already have.** One sure way to reduce stress is to take your mind off what's missing and focus instead on what's working. This means recognizing and fortifying existing strengths in yourself, other people, your environment, and the internet and technology. You can't afford to waste time complaining about what's not going your way, or attempting to excel in areas that aren't your bailiwick. If you go with what feels natural to you and delegate what goes against your grain whenever possible, you will feel more comfortable, capable, and optimistic.

**Get rid of what you don't want.** It's hard to feel like you're getting anywhere in life when you can't see the path in front of you. You can clear your way by ridding yourself of stuff, ideas, goals, commitments, relationships, and obligations that have long since served a purpose and are now only taking up premium space. Identifying and then getting rid of whatever is weighing on you, cluttering your environment, clogging your mind, or dragging you down will free up room for more resonant beliefs, belongings, and opportunities, and you will feel more energized and better able to breathe.

**Get clear about what you do want.** If you don't know where you're going in our distracted culture, you will get pulled in all sorts of directions that aren't right for you. The best way to end up in places that feel good is to let what's most important to you – your health, your family and friends, your livelihood, and other core sources of meaning and purpose – inform your decisions. Envisioning what you're after – more money in the bank, less weight around your middle, happier relationships at home and the office – will coax you through all those distractions and toward fruition.

**Make life management a practice:** Attorneys can be perfectionistic and so they tend to get swayed more than other professionals by the popular belief that life can be problem-free if you prioritize learning and growth. With so much excellent self-improvement advice at our disposal, it's easy to convince



ourselves that the secret to the ideal life must exist somewhere, if only we can find the appropriate fix.

The advantage of being an attorney is you've already surmounted enough challenges to know that you will never get everything exactly right and that's actually okay. You will have good days and bad days, surprises will interrupt even the best laid plans, and you will make mistakes. But if you approach each day as an opportunity to do the best you can, adapting when necessary to ever-changing outer circumstances and inner inclinations, your life will feel manageable most of the time. And in an exceptionally demanding field where stress is a communal experience, feeling on top of your game more often than not really is as good as it gets.

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