We know that dealing with a serious personal injury can be difficult. Having to then fight for fair compensation can be more challenging still. We are committed to delivering not only the best results, but also the most compassionate service. That is just one reason we have earned the reputation as the best plaintiffs’ firm in Maine.

We always strive to win, but in doing so, we never forget who we’re here to help. For us, it’s more than a referral. It’s a collaboration dedicated to the client’s best outcome. Working together will make the difference. Together, we’ll win.

value added representation
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ON THE COVER: Image: iStock
"[It] deserves commendations; and that it is an art, and an art worthy the knowledge and practice of a wise man."
- *The Compleat Angler*, Izaak Walton (1653)

Walton could have been writing not about fly fishing in England, but our profession. As practitioners, we provide many worthy services every day that require both knowledge and subtle art, typically without fanfare. All of us are to be commended for the work we do to help our clients, even if quietly.

We should take mindful pride in our work, and commend ourselves and each other. Tell an opposing counsel what skilled work they did. Remind your clients how important they are. Take time to reflect on your own good work.

These are but some of the things I took away from our fantastic Annual Bar Conference in Bar Harbor last month. I also received great professional education in many areas, more cool socks and a lobster cookout, heard a great band, reconnected with old friends, made new friends, and had an overall blast in Bar Harbor.

Many thanks to all our national and Maine-based presenters, our attendees and guests, and everyone who helped make this big event possible. The MSBA staff—especially Angela, Heather, Kathryn, Karen, Rachel, and Valerie—worked behind the scenes to make it worthwhile. Please thank them in person the next time you see them. Hopefully you’ll also give them a “Matt Ward-approved” high five to make them smile.

Nearly 200 attorneys, judges, and guests attended this sold-out event. I hope everyone feels the same as I do about its success. (The MSBA did what it could to hold the rain off, but we can’t control everything.) If you have comments about this year’s Annual Bar Conference that you haven’t already shared, please contact me or reach out to Bar Headquarters. Your input helps tremendously, and you will be heard.

At the Conference, one attorney told me she was taking an afternoon off to go biking with her sister. Another told me she came in late to hike a mountain with her dog. Yet another told me he is going boating for three days with his family. Somebody is rebuilding an old motorcycle. Someone else told me about his new band. And all are great attorneys. We all deserve these types of pursuits. The Annual Bar Conference helped me realize that we can balance office and court and personal life. What a great realization!

This year, the Maine legal world has been exceptionally busy. The court system is going online with our input, our CLE requirements have changed, and the MSBA monitored and participated in a record amount of legislation. All of our clients continue to require such worthy work in our practices, too.

The MSBA’s work continues and, as we approach the end of summer, 2020 is already in our sights.

Till the next one –
The Corporate Patron program connects our members with organizations that provide ancillary goods or services to Maine attorneys. Their financial support helps the MSBA keep its costs low, so you save money on meetings, events, and membership dues.

**Platinum Patrons**

**Allen/Freeman/McDonnell Agency** offers a variety of insurance plans, including professional liability insurance.

**ALPS** is the MSBA's affiliated professional liability insurer.

**Cross Employee Benefits** offers a wide range of insurance programs, including life, medical, dental, disability, and long-term care, as well as flexible benefits services.

**LawPay** enables attorneys to accept credit card a securely and correctly. LawPay meets the requirements for ABA trust account guidelines as well as the Attorney’s Professional Code of Conduct.

**Gold Patrons**

**Dow Wealth Management** is dedicated to improving clients' financial lives and making their futures more secure.

**Silver Patrons**

**Maine Lawyer Services** works with Maine attorneys on litigation and practice-related issues, including mediation, arbitration, case evaluation, discovery planning, and trial strategy.
Bar Association staff have been fielding many questions about the recent amendments to Maine Bar Rule (MBR) 5 related to the minimum continuing legal education (CLE) requirements. Even if you've reviewed these changes—or especially if you have not—I encourage you to read on. Think of this as the highlight reel…all the stuff you need to know in order to remain in good standing with the Board of Overseers of the Bar (Board).

First and foremost, every active-licensed attorney in Maine must now earn a minimum of 12 CLE credit hours per calendar year, rather than the 11 hours required prior to Jan. 1, 2019. Of these 12 hours, at least seven hours must be live credits and no more than five may be earned in a self-study environment. (MBR 5(c)(1))

The additional 12th CLE credit requires attorneys to “earn at least one in-person credit hour in the recognition and avoidance of harassment and discriminatory communication or conduct” as it relates to the practice of law. So, not only is this a live credit requirement, but you must actually obtain it in person (i.e., you must be in the room where the program is being held). You can’t earn this credit through a live webcast or webinar. “Qualifying topics include harassment or discriminatory communication or conduct on the basis of race, sex, religion, national origin, ethnicity, disability, age, sexual orientation, or gender identity.” The new H&D (harassment and discrimination) credit is separate from and in addition to the ethics and professionalism credit. (MBR 5(c)(3))

As in the past, one of the 12 hours must be in ethics and professionalism. The primary change to this requirement that you need to know is that the ethics credit now must be live. You can no longer meet the ethics requirement with a self-study program. This credit, however, does not carry the in-person requirement. (MBR 5(c)(2))

Another important change is that the 12 credit hours must be completed in each calendar year. In order to be compliant for a calendar year, you must be able to demonstrate to the Board that you completed all 12 hours by Jan. 1 of the following year. If you are found to be noncompliant on Jan. 1, you will be entitled to a grace period until the last business day of February to make up any missing CLE requirements. You may still carry over up to 10 credit hours for the following year, but the live ethics credit and the in-person H&D credit must be completed each calendar year. (MBR 5(e)(3); 5(f)(1); 5(f)(7))

A significant change for the MSBA with respect to the delivery of live programs is the new live requirement for video replays. The MSBA has always held video replays throughout the year and across the state to provide you with opportunities for live credit hours. MBR 5(h)(1)(A)(iv) has been amended to state that video replays will satisfy the live credit requirement only if there is a qualified moderator present in the replay room who can answer questions and facilitate discussion; otherwise, it will be considered self-study credit. The presence of MSBA staff to confirm your presence at a video replay no longer qualifies that program for live credits. We are working to engage qualified moderators at our video replays, but this is a significant change for us. If you have an interest in serving as a moderator in exchange for live credit hours, please contact me or CLE Director Linda Morin-Pasco.

Some other important changes to note:

1. Programs must last a minimum of 30 minutes to be considered accredited. (MBR 5(g)(1)(F))
2. Meetings of MSBA sections or committees that are primarily general business meetings or work sessions are not eligible for CLE credit. (MBR 5(g)(2)(A))
Finally, in order to transition from the previous reporting system to the new reporting system, attorneys will report all 2018 and 2019 credits on January 1, 2020. The 2018 reporting period requires a minimum of 11 credit hours, including one ethics credit. The 2019 reporting period requires a minimum of 12 credit hours, including one live ethics credit and one in-person H&D credit. If you are in need of CLE credit, please call the MSBA CLE department at 207-622-7554 or visit www.mainebar.org/page/CLE. As a reminder, certificates of attendance for any MSBA-sponsored CLE are posted to your online profile at www.mainebar.org within 30 days of the program. If you don’t know how to access your profile, please contact Bar Headquarters.

This is just an overview of some of the important amendments to Maine Bar Rule 5. I strongly suggest that you visit www.mebaroverseers.org/regulation/bar_rules.html?id=638733 to read the Rule in its entirety. There are other changes that you may find important. If you have any questions about the amendments, please contact the Board at CLE@mebaroverseers.org or 207-623-1121. Although the MSBA stands ready to assist you in meeting your CLE requirements, the Board’s CLE staff is best qualified to answer questions you may have regarding the new CLE reporting requirements.

As always, you can contact me by phone at (207) 622-7523 or by email (aweston@mainebar.org) if you have any questions about MSBA CLE opportunities, or with any ideas or concerns about the Maine State Bar Association. Thank you!

ANGELA P. ARMSTRONG is the Maine State Bar Association’s executive director. She can be reached at aarmstrong@mainebar.org.
In the towns, on the edges of towns, in fields, in vacant lots, the used-car yards, the wreckers' yards, garages with blazoned signs—Used Cars, Good Used Cars. Cheap transportation, three trailers.'27 Ford, clean. Checked cars, guaranteed cars. Free radio. Car with 100 gallons of gas free. Come in and look. Used Cars. No overhead.

-John Steinbeck, The Grapes of Wrath (1939)
Selling Used Cars to the Low-Income Buyer

Maine has traveled far since the Great Depression and the tactics of the used car dealer described in John Steinbeck’s *The Grapes of Wrath*. In the 1930s buying a car was largely a question of caveat emptor (buyer beware). As discussed below, Maine has now enacted a variety of consumer protections to help purchasers of used cars. Often these statutes also include a right to reasonable attorney fees.

But these consumer rights are little known and are not always used by buyers who have low incomes. Why? Perhaps because when you are poor and transportation is a necessity, price is not always the most important consideration. Nor is the car’s condition. Nor is its repair history. What is important is whether the dealer will even agree to sell to you. And that often means whether the dealer will provide or arrange financing.

So when the low-income shopper finally finds an affordable used car it may be old, high mileage and, understandably, soon to be needing repairs. Of course, after making car payments the buyer will typically have little money left to make repairs. Forced to choose, the car owner will then pay for repairs even if it means missing a car payment.

This leads all too often to the finance company’s repossession of the car and selling it at a dealers’ wholesale auction. The selling price will typically be much less than the consumer still owes on the car. All too soon the consumer will be served with a District Court collection action for the unpaid balance. A default judgment often follows.

Using the FTC Holder Rule to Defend a Used Car Repossession

This article will describe the many statutory protections used car buyers possess in Maine and how they can be used in defending a finance company’s repossession and debt collection action. Most importantly, due to the Federal Trade Commission’s (FTC) Holder Rule, a consumer can raise against the finance company any violations of Maine or federal law committed by the used car dealer when it sold the car. Otherwise, the finance company could in effect run a “laundry” for “fly-by-night” retailers.

This article does not mean to unfairly target used car dealers. Maine used car dealers strive to honorably provide low-income buyers the reliable cars they most certainly need. These dealers provide a valuable service, especially in rural Maine where job and home can be far apart. Nonetheless, buying a used car will sometimes result in unfair sales. It is one of the few transactions today in which the buyer and seller still negotiate price. The low-income buyer is often desperate. And a desperate buyer is a poor negotiator.

Further, the steps to a final deal are complicated and not always transparent. Add to this a buyer’s desperation and it is almost inevitable that the negotiated price will not be as favorable as the price you or I might pay. Thus, when a poor person buys a used car the invisible hand of the free market can sometimes be a fist and not a handshake; and the price paid can be a painful blow.

Mr. Joad Purchases a Used Car and then Defaults

*How do you buy a car? What does it cost? Watch the children, now. I wonder how much for this one? We’ll ask. It don’t cost money to ask. We can ask, can’t we? Can’t pay a nickel over seventy-five, or there won’t be enough to get to California.–* John Steinbeck, *The Grapes of Wrath* (1939)

Imagine today’s low-income buyer searching for a larger, more reliable car which can hold his growing family and which he’ll use to travel to his job. Happiness for him is simple: a car that works and that he can finance. We’ll call him Mr. Joad, after the dispossessed family desperate to leave the jobless Oklahoma dust bowl and travel to fertile California in John Steinbeck’s 1939 Great Depression novel, *The Grapes of Wrath*.

Mr. Joad’s current car is an old Ford Focus that has trouble in the snow. He has searched for a reliable car that can fit his
family; but he cannot find one that he can afford. Then Mr. Joad hears a radio ad for a used car dealer named Happiness Motors. The part of the ad that catches his attention is what seems to be a promise on credit:

Even if you have poor credit, even if you have gone through bankruptcy or repossession, we’ll work with our partner credit providers to find you the best rates available.

Credit is Mr. Joad’s big problem so he drives immediately to the dealership. As he approaches the dealer’s sales lot he sees a large billboard that reads:

All Our Cars Are Safe and Dependable and All Are Priced at $5,000 or Less.

Mr. Joad decides to see what cars the dealer is offering. He finds a 2002 Nissan Pathfinder with 163,183 miles. It features no purchase price and a barely completed Used Car Information Act window sticker. The dealer walks up behind him and says, “How ya doing, brother? Find something you like? I just purchased this beauty from a good guy I know in the County. Drove it down last week. Four wheel drive. Runs good. The state inspection sticker still has six months to run. Five thousand is the price and I’ll find you the lowest credit rates available.”

What the dealer failed to disclose was that when driving the Pathfinder down from the County he discovered it needed a new clutch. It was so bad that it had to be towed to his garage so his mechanic could patch it up. But he only had the clutch repaired. He did not replace it.

The Pathfinder’s Used Car Information Act window sticker is barely filled out. In the spaces where the dealer is required to disclose “mechanic defects” and “substantial damage to the body or engine,” Happiness Motors had written “None Known.” The dealer did mark that the car came with a Warranty of Inspectability, which meant that it met state inspection standards. In the section where a dealer can give the buyer an express warranty the dealer had written in large, bold letters: “AS IS.” The dealer also marked the space that warned that the car was being sold without the Uniform Commercial Code (UCC) implied warranty of merchantability.11

Mr. Joad is concerned about the dealer’s “AS IS” warning. “Look,” he tells the dealer. “I live in Augusta and my job is Skowhegan. If I can’t get to work, I’ll be fired. I need this car to be reliable.”

“No problem, brother,” replies the dealer. “This is the car you want. It’s more reliable than you are. You might miss work because it’s Monday and you drank too much watching the Patriots. But you won’t miss work because the Pathfinder couldn’t get you there.”

“Well,” Mr. Joad thinks, “he certainly sounds sincere. I’ll have to believe him.” He knows he can barely afford $5,000, so he tries to bargain. But to no avail. To partially pay the $5,000 purchase price, Mr. Joad trades in his Ford Focus for $1,000. (“And that’s doing ya a favor,” says the dealer.) He also agrees to make a $1,000 down payment that he has to borrow from his wife’s parents.

Now Mr. Joad is ready to sign the financing agreement. Not so fast, the dealer says. Mr. Joad’s low income makes him a credit risk. Yes, he can find him a credit provider; but only if he purchases from Happiness Motors a Service Contract (an extended warranty) for $1,200. Why? The dealer claims12 that the finance company requires the purchase of an extended warranty. It wants to be certain that Mr. Joad has money to fix any problems the Pathfinder might develop. Mr. Joad reluctantly agrees.

Then, just when he’s about to sign the Buyer’s Order, he sees an additional $300 charge for dealer prep. Thus, even with his $1,000 trade-in and $1,000 down payment, Mr. Joad will still owe Happiness Motors $4,500. Mr. Joad wonders who will provide him financing.

“No problem,” the dealer assures him. Last Chance Finance Company will provide credit for this amount. But because Mr. Joad’s credit history is so poor the dealer tells him the best APR he can arrange with Last Chance Finance is an APR of 17.99 percent, which is just below Maine’s 18 percent APR limit for car financing. In fact, this may not be true. Finance companies, including a local bank or credit union, will sometimes offer a lower APR when a buyer contacts it directly.

To lower his monthly payment, Mr. Joad agrees to a loan for 60 months. This means his monthly payment, including the finance charge, for the next five years will be $114.25. This means Mr. Joad will pay a total of $8,854.00 for a car that might not last five more years. But Mr. Joad is desperate. He agrees.14

Happiness Motors immediately assigns Mr. Joad’s loan to Last Chance Finance. With great relief, Mr. Joad drives off in his 2002 Pathfinder and begins to make his monthly payments to Last Chance Finance.

Unfortunately, after only a few days, Mr. Joad discovers that the Pathfinder’s engine needs significant repairs, as well as a new clutch. Further, his mechanic also finds that the Pathfinder has a good-sized rust hole in its frame. Worse, not all of the repairs needed are covered by his just purchased Service Contract. Mr. Joad complains to Happiness Motors and demands to return the Pathfinder and get back his payment. Or at a minimum, he wants Happiness Motors to repair the Pathfinder so that it can pass state inspection. The dealer is incredulous.

“Look, Mr. Joad, you know that car was sold ‘AS IS,’” the car dealer responds. “It was in all caps on the window sticker and it was on the buyer’s order. You couldn’t have missed it. So don’t pretend you’re surprised the engine needs repair. And don’t pretend you’re surprised that there’s some rust. For God’s sake, that car is 11 years old. It’s been running for more than
163,000 miles. What did you expect? If I were that old I’d need repairs too. My friend, we both gambled on this car. I paid too much for it when I bought it and so did you. We’re both losers.”

Mr. Joad tries very hard to keep his anger in check. Controlling his voice, he demands that the dealer give him a loaner while he arranges for repairs to the Pathfinder. “Loaner!” hoots the dealer. “No way! We don’t give loaners. They break down and then we have trouble finding where they were abandoned. We’re Happiness Motors not Fantasy Motors!”

Mr. Joad’s Pathfinder Is Repossessed

So, Mr. Joad spends $2,000 on repairs—money he can barely afford. Worse, he can make only the most necessary repairs. For several months, Mr. Joad is able to both cover the cost of his repairs and his monthly loan payments. But he is always short of money. Eventually his unpaid bills pile up and after making 12 monthly payments totaling $1,371, Mr. Joad skips a payment. And then he skips the next month’s payment. And the next. Eventually, Last Chance Finance repossess the Pathfinder and sells it for only $500. In due course, Mr. Joad receives a collection letter that informs him he owes the following:

This is to notify you we have sold at an auto auction your 2002 Nissan Pathfinder for $500.00. Your total loan balance prior to this sale was $5,483.00. Our loan expenses and the cost of repossession total $600.00. So the amount you now owe us is $6,083.00. We will expect full payment on the deficiency balance or a payment arrangement for the remaining balance or we will be forced to take legal action against you to collect this debt.

Mr. Joad cannot pay. Eventually, the Last Chance Finance files a District Court collection action against Mr. Joad. At this point it would seem unusual for a person like Mr. Joad to seek a lawyer’s help. After all, the lawyer might charge him $200 an hour and his debt is only $6,083.00. And he indeed was well aware that the Pathfinder was sold “AS IS.”

Further, Mr. Joad knew from the start that he could just barely afford the Pathfinder loan payments. So he’s not at all surprised that the cost of repairs eventually doomed him. Mr. Joad decides to not defend the collection action. He will either admit in court that he owes Last Chance Finance $6,083.00 or he will simply default and face a collection action (Disclosure Court) by Last Chance Finance.

But this would be a mistake.

Mr. Joad has possible defenses and counterclaims against Last Chance Finance. He could also join Happiness Motors as a third-party defendant. And he might even win his attorney fees.

### Maine Used Car Consumer Protection Laws and the FTC Holder Rule

I don’t give a damn if you don’t make payments. We ain’t got your paper. We turn that over to the finance company. They’ll get after you, not us. We don’t hold no paper.

—John Steinbeck, *The Grapes of Wrath* (1939)

If Mr. Joad had sought a lawyer’s advice, he would have learned of numerous statutory defenses he did not know existed and also that he could answer Last Chance Finance’s collection action with a counterclaim.

But how can this be? Mr. Joad’s dispute at this point is with assignee Last Chance Finance and not the used car dealer who sold him the poor-quality Pathfinder. Finance companies are not really concerned with whether your car purchase was wise or possibly against consumer protection statutes. They are primarily concerned with whether you can make your loan payments. And Mr. Joad failed to pay and now owes Last Chance Finance $6,083.00.

The basis for Mr. Joad’s possible relief is found in Happiness Motors’ lengthy finance contract. Amid its many hard to decipher provisions was notice of the Federal Trade Commission (FTC) Holder Rule:

**NOTICE:** ANY HOLDER OF THIS CONSUMER CREDIT CONTRACT IS SUBJECT TO ALL CLAIMS AND DEFENSES WHICH THE DEBTOR COULD ASSERT AGAINST THE SELLER OF GOODS OR SERVICES OBTAINED PURSUANT HERETO OR WITH THE PROCEEDS HEREOF. RECOVERY HEREUNDER BY THE DEBTOR SHALL NOT EXCEED AMOUNTS PAID BY THE DEBTOR HEREREUNDER.

This means that Mr. Joad’s promise to pay Last Chance Finance can be subject to any valid claims and defenses he has against Happiness Motors. The FTC, without the use of “hereto,” “hereof,” or “hereunder,” has explained its Holder Rule as follows:

A creditor or assignee of the contract is thus subject to all claims or defenses that the consumer could assert against the seller. The Holder Rule does not create any new claims or defenses for the consumer; it simply protects the consumer’s existing claims and defenses. The only limitation included in the Rule is that a consumer’s recovery “shall not exceed amounts paid” by the consumer under the contract.

This notice means Mr. Joad can raise against Last Chance Finance any defenses or counterclaims he might have against Happiness Motors, which sold him the Nissan Pathfinder. Last Chance Finance’s possible liability will be limited to the amount still to be paid on the loan and the amounts already
paid by Mr. Joad, including all his monthly payments to date, the value of his trade-in, and his down payment. 21

Mr. Joad’s remedies will not necessarily be limited to his actual damages. Several of the Maine’s consumer protection statutes also allow equitable remedies, such as contract recession and restitution. For example, the private remedies in the Maine Unfair Trade Practices Act (UTPA) allow the injured consumer to bring an action “for actual damages, restitution and …other equitable relief, including an injunction.”22 Thus, the FTC Holder Rule allows the car buyer to (1) defend a creditor suit by raising as a set-off any valid damages claim the buyer might have against the seller, or (2) if the seller’s breach is sufficiently substantial (e.g., a violation of the UTPA) to seek rescission and restitution.23

Further, if the statutes violated by Happiness Motors also allow victims to recover their reasonable attorney fees, Mr. Joad could also include in his answer a request for attorney fees. This might require him to join Happiness Motors as a third-party defendant.24 As discussed below, many of Maine’s consumer protection statutes provide for attorney fees. Any recovery by Mr. Joad from Last Chance Finance could take into account any benefits he has received. For example, if Mr. Joad had driven the Pathfinder a significant number of miles, the court could consider reducing its judgment as a setoff to reflect his mileage.25

Of course, when Last Chance Finance repossessed the Pathfinder, it could also be liable to Mr. Joad if its repossession had violated federal and state finance laws.26 But discussion of the credit repossession statutes is for another day and another essay.

Maine Consumer Protection Statutes for Used Car Buyers


- John Steinbeck, The Grapes of Wrath (1939)

Given how difficult and confusing buying a used car can be, it is fortunate that Maine has enacted several consumer protections statutes that specifically apply to sales of used cars. Indeed, pursuant to 10 M.R.S. §1174 (1), it is an unfair and deceptive practice for a licensed used car dealer to engage in “any action which is arbitrary, in bad faith or unconscionable and which causes damage to the public.”

Here are brief summaries of Maine statutes that might protect Mr. Joad.


The Maine Unfair Trade Practices Act (UTPA), 5 M.R.S. §207, renders it unlawful to engage in any unfair or deceptive act or practice in the conduct of any trade or commerce. The UTPA at 5 M.R.S. §213 allows consumers injured by a UTPA violation to seek “actual damages, restitution, and…other equitable relief”27 Mr. Joad can also seek “reasonable attorney fees.” Further, several Maine consumer protection laws specifically state that a violation of that statute is also a per se UTPA violation.28

Maine Used Car Information Act (10 M.R.S. §§1471-78) and the Secretary of State Used Car Sticker Rules (29-250 C.M.R. Ch. 104)

The Maine Used Car Information Act is the primary consumer protection statute for consumers buying cars. It sets forth detailed steps a dealer must take when offering used cars for sale. Most importantly, it prohibits a dealer from even offering for transportation a used car that does not meet state inspection standards29 and it requires dealers to disclose known serious defects. Most importantly, violations of this statute are also per se violations of the Maine Unfair Trade Practices Act, 5 M.R.S. § 207, which opens the door for Mr. Joad to also claim reasonable attorney fees.30

The Maine Law Court has required that this statute be liberally construed in order to carry out the Legislature’s beneficent purpose of protecting consumer purchasers of used cars.31

Further, the Maine Secretary of State has issued legally binding Used Car Window Sticker Rules that outline in detail the duties and responsibilities of a licensed used car dealer pursuant to the Used Car Information Act. Violations of these Rules are prima facie evidence of a UTPA violation.32

Here are three important requirements of these laws.

1. Pursuant to 10 M.R.S. §1475 and §1 (C) of the Secretary of State Window Sticker Rule, a dealer offering a used car for sale must first affix to its window a disclosure statement called the “Used Vehicle Buyer’s Guide.” This provides the shopper background information about the used car and any warranty protections. See Maine Attorney General Consumer Law Guide, §9.13 for an annotated example of the used car window sticker.33

2. Pursuant to 10 M.R.S. 1475 (2-A) (C) and 1 (C) (2) (c) of the Sticker Rule, the dealer must disclose on the Buyer’s Guide window sticker each mechanical defect known to the dealer at the time of sale, even if it has been fully repaired.34 It
must also disclose known substantial damage to the body or engine.\textsuperscript{35}

3. Pursuant to 10 M.R.S. §1474, a dealer offering for sale, or selling, a used car warrants that the dealer has had the car inspected and that the vehicle meets inspection standards and displays a sticker issued no later than 60 days prior to the sale.\textsuperscript{36}

\textit{State Motor Vehicle Inspection Standards (29-A M.R.S. §1751-76)}

All motor vehicles being offered for sale by a Maine used car dealer (e.g., displayed for sale on the dealer’s lot) must meet state inspection standards and display a valid inspection sticker issued within 60 days of the sale. The sticker cannot be added to the car after the sale or after it was first shown to the consumer. The only exception to this requirement are vehicles the dealer has marked with an Unsafe Motor Vehicle sticker. These cars cannot be sold for transportation and the buyer must have it towed off the lot.\textsuperscript{37}

\textit{Maine Uniform Commercial Code (UCC) Implied Warranty of Merchantability (11 M.R.S. §2-316 (5))}

The Maine UCC generally prohibits merchants selling almost any new or used consumer good from disclaiming the Maine Implied Warranty of Merchantability, which guarantees the item when sold is not seriously defective (i.e., not fit for its ordinary purpose).\textsuperscript{38} Unfortunately for Mr. Joad, there is one exception to this requirement. Maine law allows used car dealers to exempt themselves from this law. However, to do so they must clearly disclaim this warranty on the used car window sticker. Further, they cannot disclaim it if they have given the consumer an express warranty or if they have sold the consumer a Service Contract (i.e., an extended warranty).\textsuperscript{39} A consumer injured by a breach of warranty can seek incidental and consequential damages,\textsuperscript{40} but only first by giving the seller notice that its warranty had been breached and allowing the dealer or Service Contract provider to make a repair attempt.\textsuperscript{41}

\textit{Maine Uniform Commercial Code (UCC) Immediate Rejection (11 M.R.S. §2-602)}

Pursuant to 11 M.R.S. §2-602, Rightful Rejection, if a used car buyer quickly rejects a seriously defective vehicle the buyer can demand return of the purchase price. In such circumstances the consumer need not allow the dealer or warranty provider the opportunity to make a repair. Perhaps the simplest measure of whether a good is substantially defective is when the item is not fit “for the ordinary purposes for which such goods are used.”\textsuperscript{43}

\textit{Maine Uniform Commercial Code (UCC), Deductions of Damages from Price (11 M.R.S. §2-717)}

Also, the UCC at 11 M.R.S. §2-717, could allow Mr. Joad to deduct any damages caused by Happiness Motors’ breach of contract (e.g., a breach of warranty) from any amount owed Last Chance Finance. This deduction might have been enough to allow Mr. Joad to not default on his loan.\textsuperscript{44} However, §2-717 requires Mr. Joad to first notify Happiness Motors that he intends to deduct his damages from what he owes.

\textit{Maine Uniform Commercial Code (UCC), Unconscionable Contract or Clause (11 M.R.S. §2-302)}

The Maine UCC also protects consumers from unconscionable contracts. The strongest claim under this section is a contract that is both procedurally unfair (depriving a consumer of meaningful choice) and substantively unfair (fundamentally unfair or unreasonably one-sided).


These provisions protect debtors from used car dealers and finance contract assignees who use deception to collect excessive finance charges.

\textit{Common Law Fraud and Punitive Damages}

A 5 M.R.S. §207 (UTPA) unfair and deceptive trade practice claim has a major advantage over a common law fraud claim of intentional misrepresentation: the consumer is not required to prove dealer intent when claiming a violation of the UTPA. Nonetheless, a claim of intentional misrepresentation may also be worthwhile because this raises the possibility that Mr. Joad could also recover punitive damages.\textsuperscript{45} The FTC Holder rule preserves a consumer’s
right to bring civil fraud charges against the assignee finance company.  

How Mr. Joad’s Consumer Rights Were Violated

“Sure we sold it. Guarantee? We guaranteed it to be an automobile. We didn’t guarantee to wet-nurse it. Now listen here, you—you bought a car, an’ now you’re squawking.”

- John Steinbeck, *The Grapes of Wrath* (1939)

A close look at the facts underlying Mr. Joad’s purchase of the 2002 Nissan Pathfinder reveal several possible legal defenses and counterclaims to the Last Chance Finance collection action.

*Unfair Trade Practice Act (UTPA) Violations: False Advertising, Illegal Service Contract, Excessive Interest Rates*

Mr. Joad decided to shop at Happiness Motors because its advertising promised him the best credit rates available, a car priced no more than $5,000, and the assurance that the car would be “safe and dependable.” As described below, Mr. Joad relied on these promises and each were arguably “unfair and deceptive” and in violation of the UTPA, 5 M.R.S. §207. Pursuant to 5 M.R.S. §213, Mr. Joad can seek from Last Chance Finance (FTC Holder Rule) and Happiness Motors actual damages, restitution or other equitable relief and his reasonable attorney fees.

1. The Pathfinder most certainly cost more than $5,000. Mr. Joad was required to pay a previously undisclosed $300 document preparation fee and he was also required, in order to obtain financing, to purchase a $1,200 Service Contract (extended warranty). How important are a few hundred dollars in extra charges? For the low income buyer, they are very important. Mr. Joad’s total finance charge was $2,354.00. Eventually, Mr. Joad could not make his finance payments and his car was repossessed.

2. Despite Happiness Motors’ claim, credit providers such as Last Chance Finance never insist that the debtor must purchase of a Service Contract (extended warranty). Further, any charge required to obtain credit is a finance charge and therefore the APR charged by Happiness Motors far exceeds the 18 percent statutory maximum as set by the Maine Consumer Credit Code, 9-A M.R.S. 2-201, Finance Charges. Therefore, when Happiness Motors forced the purchase of a service contract it also violated the Maine Consumer Credit Code, 9-A M.R.S. §5-115, Misrepresentation, and 9-A M.R.S. §5-117, Prohibited Practices.

3. Nor was the Pathfinder “safe and dependable.” It needed significant repairs almost as soon as it was purchased. Even though Happiness Motors said the Pathfinder was being sold “AS IS,” it still is required to disclose to buyers known material facts concerning the condition of the car. Otherwise it is common law misrepresentation. What is a material fact? A fact that, if it were known to the consumer, would cause the consumer not to buy the car at the offered price.

4. Finally, the dealer did not actually “work” with its “partner credit providers” to obtain “the best rates available.” In fact, the opposite occurred. Last Chance Finance was prepared to finance Mr. Joad’s purchase at an APR “buy rate” of 16 percent, not 17.99 percent. But this was not disclosed to Mr. Joad. Instead, the dealer deceived Mr. Joad and told him that the best rate he could obtain was a 17.99 percent APR. The difference between the 16 percent and 17.99 percent APR is what is called the “Yield Spread Premium.” Last Chance Finance will pay back part of this premium to Happiness Motors and over the years Mr. Joad will spend considerably more in interest than he would have if he had gone directly to an independent lender, such as a bank or a credit union.

*Violations of the Maine Used Car Information Act (10 M.R.S. §§1474-1476) and Used Car Sticker Rules (29-250 C.M.R. Ch. 104)*

Happiness Motors also violated the Used Car Information Act window sticker statute in multiple ways. Each violation of this statute is also a *per se* violation of the Maine Unfair Trade Practices Act.

1. Happiness Motors did indeed know of a mechanical defect: The Pathfinder’s clutch was defective. Even though Happiness Motors had tried to repair it, the Used Car Sticker Rule makes it clear it must still disclose the attempted repair.

2. Before offering the Pathfinder for sale Happiness Motors is required to have it inspected and given an up-to-date (not more than 60 days old) state inspection sticker. If Happiness Motors had done a proper inspection it would have discovered the rust damage and the dealer would have been required to repair it and also disclose the repair on the window sticker as “Prior Substantial Damage to Body or Engine.”

3. Happiness Motors also improperly disclaimed implied warranties. In general, Maine sellers of consumer goods, new or used, must satisfy the implied warranty of merchantability that the item is not seriously defective. However, this law does not apply to dealers who sell used cars. They are the only sellers in Maine that are allowed to disclaim implied
warranties when selling to consumers. But to do so, dealers are required to affirmatively check on the window sticker the “NO IMPLIED WARRANTY” box, which Happiness Motors did. However, the federal Magnuson-Moss Warranty Act (15 U.S.C. §§ 2301-2312) prohibits disclaiming implied warranties if within 90 days of the sale the dealer sells the buyer a Service Contract (extended warranty). Happiness Motors thus improperly deprived Mr. Joad of his UCC implied warranty rights and thereby violated the Maine Used Car Information Act. Further, pursuant to 14 M.R.S. §1477, implied warranty rights and thereby violated the Maine Used Motor Vehicles thus improperly deprived Mr. Joad of his UCC implied warranty rights and thereby violated the Maine Used Car Information Act. Further, pursuant to 14 M.R.S. §1477, this is also a per se violation of the Maine UTPA.61

Mr. Joad’s possible remedies for violations of the Used Car Information Act include (A) free repairs so the Pathfinder meets all express and implied warranties, including the warranty that the Pathfinder meets State Inspection Standards; (B) return of the vehicle to Happiness Motors and receiving back his money (restitution); or (C) damages equal to the “differences between the fair market value of the motor vehicle in its actual condition at the time the dealer fails to perform his obligation under the warranty and the fair market value of the motor vehicle had it been as warranted.” The Used Car Information Act also allows Mr. Joad civil remedies of “not less than $100 nor more than $1,000 as liquidated damages, and costs and reasonable attorney fees.”62

Must Mr. Joad first give Happiness Motors an opportunity to make repairs? Often the answer to this question is yes. For example, if the dealer has put on a state inspection sticker but the car does not meet state standards then the buyer should give the dealer a chance to make any necessary repairs. Indeed, a dealer’s first line of defense to a warranty claim is often that the buyer did not first notify it. However, as we have seen, Happiness Motors was notified but still had no interest in spending money on repairs. The remedy for breach of an implied warranty is a free repair. But if the dealer fails to repair a serious State Inspection defect then that failure is also per se UTPA violation and the remedies for violations of the UTPA include restitution or damages. Of course, as the facts above make clear, Happiness Motors has no interest in providing Mr. Joad with any relief.

Finally, since violations of the Used Car Information Act are also per se violations of the UTPA, 5 M.R.S. §207 and §213, Mr. Joad can seek all UTPA remedies, including reasonable attorney fees.66

Maine Uniform Commercial Code (UCC): Immediate Rejection of a Defective Vehicle

Even if Happiness Motors had put a new state inspection sticker on the Pathfinder, Mr. Joad should have been able to immediately cancel the sale and receive back all his money. This is the UCC 11 M.R.S. §2-602 right to immediately reject a seriously defective item. Since he did not put significant mileage on the car, he can demand the return of his purchase price as well as any consequential and incidental damages.71

But if the defects claimed by Mr. Joad are only minor, then he may have to settle for repairs (i.e., cure).72

Maine Uniform Commercial Code (UCC): Implied Warranty of Merchantability

Pursuant to the Magnuson-Moss Warranty Act, Happiness Motors is prohibited from disclaiming Mr. Joad’s implied warranty rights since it sold him a service contract within 90 days of the purchase. To attempt to do so is a prima facie (presumptive) violation of the Maine UTPA. Thus, Mr. Joad’s implied warranty rights have not been properly disclaimed and certainly the Pathfinder when sold was not in proper working order. Therefore, Mr. Joad’s implied warranty remedy is a free repair and any incidental and consequential damages, which could include the use of a loaner vehicle.75

Maine Uniform Commercial Code (UCC): Implied Warranty of Fitness for a Particular Purpose

Happiness Motors’ insistent claim that the Pathfinder would reliably deliver Mr. Joad to his work seems more than mere puffery. But whether it could be considered an implied warranty of fitness for a particular purpose is debatable. After all, it is a car’s normal function to take you from Point A to Point B.77

Maine Uniform Commercial Code (UCC): Deduction of Damages from Price

UCC provision 11 M.R.S. § 2-717 could allow Mr. Joad to deduct “all or any part of the damages resulting from the breach of the contract from any part of the price still due under the same contract.” Thus, when Happiness Motors
breach of contract caused Mr. Joad to pay for repairs, Mr. Joad could have deducted the cost of those repairs from what he still owes Last Chance Finance. But to do so Mr. Joad first has to notify Happiness Motors and explain the deduction to Last Chance Finance.78

Maine Uniform Commercial Code (UCC), Unconscionable Contract or Clause

The UCC at 11 M.R.S. §2-302 prohibits sale contracts that are “unconscionable” and Mr. Joad’s contract may be so unfair as to violate this section. Two possible grounds for declaring a contract unconscionable would be if it is:

1. substantively unconscionable, namely fundamentally unfair or unreasonably one-sided;
2. procedurally unconscionable, amounting to unfair surprise or depriving the consumer of meaningful choice.

In determining “substantive unconscionability” a court may refuse to enforce a term of a contract if it so one-sided that it “shocks the conscience.” The court should also look at all the circumstances under which the contract was made to determine if the terms are unduly oppressive.

Magnuson-Moss Warranty Act

In order to obtain financing Mr. Joad was forced to buy an expensive Service Contract. This is in violation of the federal Magnuson-Moss Warranty Act and can result in damages and attorney fees.79

Dealer Professional Sale Standards

In addition to the above statutes protecting used car buyers, the Legislature has stated that a licensed car dealer commits an unfair and deceptive practice when it engages in “any action which is arbitrary, in bad faith or unconscionable and which causes damage to the public.”80


The contract required by Happiness Motors was certainly deceptive and in violation of the Maine Consumer Credit Code. First, it required Mr. Joad to purchase a Service Contract for $1,200 in order to obtain financing at an APR of 17.99 percent. This is a falsehood. Credit providers do not require their customers to purchase extended warranties. Further, any charge required to obtain credit is a finance charge; therefore the actual APR charged Mr. Joad was well beyond the 18-percent maximum allowed by the Maine Consumer Credit Code.81

Further, Happiness Motor’s claim that it would obtain credit rates that were the “best rates available” was also deceptive. The dealer deceived Mr. Joad when he told him that 17.99 percent was the best rate he could get. Actually, Last Chance Finance would have financed Mr. Joad’s purchase at a 16 percent APR but it allowed Happiness Motors to add on a 1.99 percent Yield Spread Premium.

These misrepresentations are in violation of the Maine Consumer Credit Code, 9-A M.R.S. §5-115:

A creditor or a person acting for him may not induce a consumer to enter into a consumer credit transaction by misrepresentation of a material fact with respect to the terms and conditions of the extension of credit. A consumer so induced may rescind the sale, lease or loan or recover actual damages, or both.

Violation of the Maine Consumer Credit Code can result in consumer remedies, such as refunds and penalties. See 9-A M.R.S. §§ 5-201 and 5-202.

Punitive Damages for Dealer Fraudulent Misrepresentation

A statutory unfair and deceptive trade practice claim (UTPA) has a major advantage over a common law fraud claim of intentional misrepresentation. This is because consumers claiming a violation of the UTPA are not required to prove that the seller intended to commit the violation. Nonetheless, an intentional misrepresentation claim may be worthwhile because this raises the possibility that Mr. Joad can also recover punitive damages.

To prove common law fraud Mr. Joad must establish:

1. the dealer made a false representation of material fact;
2. the dealer knew the representation was false;
3. the dealer was making this false representation in order to get Mr. Joad to buy the Pathfinder;
4. it was reasonable for Mr. Joad to rely on the dealer’s promise; and
5. Mr. Joad was damaged by the misrepresentation.82

Mr. Joad’s FTC Holder Rule Remedies

“Get ‘em under obligation. Make ‘em take up your time. Don’t let ‘em forget they’re taking up your time. People are nice, mostly. They hate to put you out.”

- John Steinbeck, The Grapes of Wrath (1939)
Mr. Joad now faces a repossessed car collection action by Last Chance Finance for $6,083.00. Due to the FTC Holder Rule, Mr. Joad can raise defenses and bring counterclaims based on Happiness Motors’ many violations of Maine’s consumer protection statutes. The Maine Unfair Trade Practices Act and the other statutes discussed above allow for recession, damages, and penalties. Further, since Happiness Motors’ conduct was intentional, punitive damages could also be awarded.83

Thus, Mr. Joad’s defenses and counterclaims could result not only in cancelation of his Last Chance Finance debt of $6,083.00 but also the affirmative recovery of the amounts that he had already paid under the purchase contract, including the value of his trade-in and his down payment.84

Could Mr. Joad also recover from Last Chance Finance the $2,000 Happiness Motors forced him to pay in repairs? No.85

The FTC Holder Rule has an affirmative recovery of damages cap:

The [FTC Holder Rule] limits the consumer’s affirmative recovery to the amount the consumer has already “paid in.” In other words, the consumer’s maximum recovery under the rule is cancellation of all remaining indebtedness plus an affirmative recovery of the amount already paid on the debt.

In calculating the amounts paid in, add both the amounts the consumer paid to the note holder and any amount paid to the prior holder of the note…. When a credit sales contract is assigned to a creditor, the amount paid in by the consumer includes all deposits and trade-ins the consumer has given to the seller. The consumer can thus recover affirmatively all periodic payments and late charges paid either to the seller or an assignee and also the total amount of the consumer’s down payment and the value of the trade-in.86

Thus, Mr. Joad can seek the following relief from Last Chance Finance:

1. Cancellation of remainder of his Last Chance Finance debt of $6,083.00 (i.e. the loan deficiency);87
2. The $1,371.00 he had already paid Last Chance Finance before his car was repossessed; and
3. The $2,000 he had affirmatively paid Happiness Motors (his $1,000 trade-in and $1,000 down payment) as part of his consumer credit purchase contract.88

This recovery will not make Mr. Joad whole. The Happiness Motors statutory violations caused him to spend $2,000 on repairs. For this reason, Mr. Joad should consider joining Happiness Motors as a third-party defendant and seek his consequential and incidental damages.

Mr. Joad’s Possible Additional Remedies, Including Attorney Fees

Flags, red and white, white and blue—all along the curb. Used Cars. Good Used Cars.

—John Steinbeck, The Grapes of Wrath (1939)

If Mr. Joad were to join Happiness Motors as a third party defendant, he might also be able to recover his damages and penalties beyond the FTC cap and at least some of his attorney fees89 for the dealer’s violations of Maine’s Unfair Trade Practices Act (UTPA), 5 M.R.S. § 213.90 In addition, he could also seek from the dealer any consumer remedies provided by the UTPA and Maine’s used car sale statutes, most importantly the Used Car Information Act, 10 M.R.S. §§1471-1478, and the Maine Consumer Credit Code, 9-A M.R.S. Article 5, Remedies and Penalties.

If Mr. Joad does not join Happiness Motors as a third-party defendant, there is still an argument that Last Chance Finance should pay at least a portion of his attorney fees. Certainly the consumer protection statutes violated by Happiness Motors provide for attorney fees. The issue is whether attorney fees based on Happiness Motors’ illegal practices can be awarded in excess of the damages cap imposed by the FTC Holder rule.

The argument for allowing statutory attorney fees is that such fees are not damages and therefore the FTC damages cap does not apply. Poussard v. Commercial Credit Plan, 47 A.2d 881,886 n.6 (Me. 1984) finds that the UTPA provision for awards of reasonable attorney fees is “irrespective of the amount in controversy” and that the purpose of this provision is to “encourage litigation which might otherwise be prohibited by economic considerations, in order to vindicate important public interests.”91 As stated in Beaulieu v. Dorsey, 562 A.2d 678 (Me. 1989): “The amount involved in the complaint and the results obtained are not relevant in claims brought under the Unfair trade Practices Act.”92

The National Consumer Law Center argues that the finance company can indeed be responsible for attorney fees for seller-related claims:

The creditor’s liability for fees is not a derivative liability but is based on its own actions in refusing to resolve the consumer’s claim. Attorney fees are not awarded because of the seller’s conduct but because the of the defendant’s litigation conduct. It is the creditor who is refusing to settle the claim and who insists on litigating the issues.93

Of course, Last Chance Finance can be liable for its own conduct, including any participation in Happiness Motors’ conduct. In such cases, the FTC Holder rule cap on damages...
would not apply. For example, the FTC damages cap should not apply if Last Chance Finance was a willing participant in the Happiness Motors scheme to require buyers to buy expensive Service Contracts. In such a case, attorney fees could certainly be sought pursuant to the Maine Unfair Trade Practices Act.

Conclusion

Goin’ to California? Here’s jus’ what you need. Looks shot, but they’s thousan’s of miles in her.

-John Steinbeck, The Grapes of Wrath (1939)

Of course, today is not the Great Depression and Maine car dealers rarely treat their customers as unfairly as Happiness Motors did. Today the Mr. and Ms. Joads of Maine are not desperately trying to get to California; they are simply trying to get back and forth to their jobs. Sometimes their used cars, for whatever reason, will be repossessed and soon enough they will be served with a debt collection court summons. As this essay attempts to describe, low-income consumers may well have legal defenses and counterclaims to these debt collection actions and they may even be able to recover their legal fees.

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1 The views in this article (and any mistakes) are the author’s alone. When consumers purchase a used car in Maine they benefit from numerous, but little known, statutory protections. A valuable guide to Maine’s many consumer protections statutes can be found in the online edition of The Maine Attorney General’s Consumer Law Guide, Chapter 9, “Consumer Rights When You Buy a Used Car”, at www.maine.gov/ag/consumer. The finest national guide to the issues discussed in this essay is the National Consumer Law Center’s multi-volume The Consumer Credit and Sales Legal Practice Series. The updated texts of this series can be found at www.nclc.org/library.

2 The common law rule of caveat emptor meant that the buyer should assume that the used car is being sold “as is”, without any warranty, and that the buyer is responsible for inspecting the car and test driving it before purchasing it. This rule did not protect dealers who engaged in fraudulent misrepresentations, as opposed to puffery.

3 Dealers who provide their own credit financing are sometimes known as Buy Here Pay Here dealers. Their customers often have bad credit scores and are willing to pay high finance charges.

4 The Federal Reserve Bank of New York reported in 2018 that delinquent auto loans have been slowly trending upward since 2012.

5 In Maine a significant number of debt collection actions result in consumer defaults. No doubt this is often due to a lack of legal representation. In 2013 the Maine Justice Action Group published State of Access to Civil Justice in Maine. This report found:

In about 3 out of 4 civil cases in Maine, one or both of the people involved have never spoken to a lawyer and are forced to represent themselves. This is not by choice. Many people cannot afford to hire their own attorney. Also, Maine’s legal aid providers do not have sufficient staff to meet the need.

6 16 C.F.R. pt. 433. In a May 3, 2012 letter to the National Consumer Law Center, the Federal Trade Commission (FTC) provided the following description:

The Holder Rule protects consumers who enter into credit contracts with a seller of goods or services by preserving their right to assert claims and defenses against any holder of the contract, even if the original seller subsequently assigns the contract to a third-party creditor….A creditor or assignee of the contract is thus subject to all claims or defenses that the consumer could assert against the seller.

7 This essay will not deal with a finance company’s auto repossessions that violates the requirements of the Maine Consumer Credit Code, Limitations on Creditor’s Remedies, 9-A M.R.S. §§5-110-5-301, or the Maine Fair Debt Collection Practices Act, Prohibited Practices, 32 M.R.S. §11013. For example, pursuant to the Maine Consumer Credit Code:

A. Before repossessing a car the finance company must give the consumer written notice of the consumer’s Right to Cure their default;
B. Repossessions must be done without breach of the peace;
C. Consumers must be told the details of how the car will be sold and given a Notice of Right to Redeem; and
D. Any sale of the repossessed car must be conducted in a commercially reasonable manner.


9 It is a commonplace that the poor pay more than you and me for everyday items, including cars:

“The poor pay more for a gallon of milk; they pay

10 10 M.R.S. §§1474-76.
11 11 M.R.S. §2-316 (5).
12 In fact, finance companies never require the purchase of service contracts (extended warranties). But used car dealers profit significantly when they can persuade the buyer to purchase a service contract or a “gap” waiver policy. They might retain a commission as high as 50% of the policy premium.
13 9-A M.R.S. §2-201 (9-A).
14 Mr. Joad’s total finance charge adds up to $2,354.00. Auto financing is another example of how the poor pay more. And, if you’re low-come, having bad credit or no credit can make you even more financially unstable, according to new research by the Urban Institute. Let’s look at a person taking out an auto loan who has a subprime score below 600 (on a scale of 300 to 850, with the higher score the better). He’s buying a $10,000 used car. The subprime borrower has a FICO credit score between 500 and 589, which qualifies him for an interest rate of 17.548 percent for a 48-month loan. He’ll pay a total of $3,987 in interest. Meanwhile, a prime borrower with a FICO score between 720 and 850 is offered a rate of 4.986 percent. Total interest paid: $1,031.

15 Consumers who believe they were sold a used car which did not meet state inspection standards should attempt to have the Maine State Police inspect it within 30 days of the sale. Contact the Maine State Police Traffic Safety Unit (20 State House Station, 30 Hospital Street, Augusta, ME 04333-0020, 1-800-452-4664).
16 If a used car dealer breaches a buyer’s implied warranty rights, consequential damages could include the cost of a replacement vehicle while the dealer makes repairs.
17 Mr. Joad’s 1990 Toyota Camry’s market value was $4,781.50, according to the Kelly Blue Book. The dealer’s total profit at the time of sale was $2,354.00 (total cost of car to the dealer was $7,135.50). Of this Rule can be found in National Consumer Law Center (NCLC), Federal Deception Law Ch.4 (9th ed. 2017), updated at www.nclc.org/library. If this Holder Rule notice is not found in the finance contract, the F.T.C. has indicated that this failure can also be an unfair or deceptive act or practice. See Music Acceptance Corporation v. Lofing, 32 Cal. App. 4th 610, 626-627 (1995).
18 41 Fed. Reg. at 20,023. See Ellis v. Gen. Motors Acceptance Corp., 160 F. 3d 703, 709 (11th Cir. 1998)(Holder Notice gives buyer the right to withhold payment if car is a lemon).
23 See Ford Motor Credit Company v. Morgan, 536 N.E. 2d 587,589-90 (Ma. 1989) (seller’s breach must be so substantial that court is persuaded that rescission and restitution are justified); 40 Fed. Reg. at 53524-53527.
24 The NCLC raises the possibility that the consumer might be eligible for attorney fees without a third-party complaint against the dealer, even if the fees exceed the FTC Holder Rule that caps damages to the “amount paid” by the buyer. See National Consumer Law Center, Federal Deception Law §4.3 (9th ed. 2016).
25 See Felde v. Chrysler Credit Corporation, 580 N.E.2d 191, 199-200 (Il. 1991) (rescission means cancelation of automobile contract and restoration of parties to their initial status, including a setoff for benefits received by the rescinding party). Please note: the Felde court incorrectly awarded recovery only because the seller’s breach of warranty was sufficiently egregious to warrant rescission. In 2012 the FTC issued an opinion that rejected this limitation and also confirmed the practical limitation “that an affirmative recovery requires a consumer claim large enough to first fully satisfy the remainder due on the debt before the consumer is entitled to a positive recovery.” See National Consumer Law Center, Federal Deception Law §4.3.4.3.2 (9th ed. 2017).
26 See National Consumer Law Center, Repossessions §13.9.2.2 (9th ed. 2017). For example:

…the creditor is liable for UCC §9-625 actual or statutory damages, tort punitive damages, and state credit law statutory damages for its violations in the repossession and sale of the collateral. The creditor is also liable for truth in Lending Act violations, and its own debt collection harassment.
27 Noveletsky v. Metropolitan Life Ins. Co., 49 F. Supp. 3d
123 (D. Me. 2014) (to recover damages for UTPA violation consumer must show loss of money that resulted from the violation).

28 See e.g., Maine Used Car Information Act, 10 M.R.S. §1477 (“Any violation of this chapter shall constitute a violation of Title 5, chapter 10, Unfair Trade Practices Act.”). But even if the statute does not make a violation a per se UTPA violation, a serious violation of a state or federal law could be so “unfair” as to also be an UTPA violation, particularly where the statutory violation causes consumer injury. See National Consumer Law Center, Unfair and Deceptive Acts and Practices §3.2.7.4.1, §4.2.11 (9th ed. 2016). See also State v. Weinschenk, 2005 ME 28, §16, 868 A.2d 200. See generally, Maine Attorney General’s Consumer Law Guide, Chapters 4 and 9 at www.maine.gov/ag/consumer.

29 The only time this State inspection guarantee does not apply is if the dealer is selling the used car for purposes other than transportation. Then it must be marked with a yellow “UNSAFE MOTOR VEHICLE” sticker and the buyer must tow the car from the dealer’s lot. See 10 M.R.S. §1474.

30 Pursuant to 10 M.R.S. §1477, any violation of the Used Car Information Act is also a per se violation of the Maine Unfair Trade Practices Act, which at 5 M.R.S. §213 provides reasonable attorney fees for UTPA violations. See Thurber v. Bill Martin Chevrolet, 487 A.2d 631 (Me. 1985) (purpose of attorney fees provision is to provide incentive to Bar to enforce the UTPA in cases where it would be financially impractical for consumer to obtain effective legal counsel).


32 Maine Secretary of State Used Car Information Act Rules (29-250 C.M.R. ch.104) Section 1 (F).


34 Maine Secretary of State Used Car Information Act Rules (29-250 C.M.R. ch.104) Section 1 (C) (2) (c).

35 Substantial collision damage must be disclosed if it cost $2000 or more to repair. Non-collision damage or defects must be disclosed if they are so significant they would cause the buyer to not purchase the vehicle or to pay less. See Maine Attorney General’s Consumer Law Guide §9.13, update at www.maine.gov/ag/consumer/consumer_law_guide.

36 29-A M.R.S. §1754 (1) (C).

37 See 10 M.R.S §1474 and Secretary of State Rule 29-250 C.M.R. ch.104, Section 1 (E).

38 See Jolovitz v. Alpha Romeo Distributors of North America, 760 A.2d 625 (Me. 2000) (even though car had wheel alignment problems and gas odor it was still fit to be driven and therefore did not violate implied warranty of merchantability). See also the Magnuson-Moss Warranty Act (15 USC §§ 2301-2312. The Magnuson-Moss Warranty Act is a federal statute governing express and implied warranties on consumer products. If a used car dealer gives an express warranty, then this statute prohibits the dealer from disclaiming implied warranties, at least during the term of the express warranty. If the dealer sells the consumer a service contract (extended warranty) within 90 days of the purchase, then this Act prohibits the dealer from also disclaiming implied warranties. The Act provides for attorney fees for breach of implied warranty, even if there is no express warranty.

39 Secretary of State Rule 29-250 C.M.R. Ch. 104, Section 1 (C); see also Magnuson-Moss Warranty Act, 15 U.S.C. §§2301-2312; 10 M.R.S. §§1473 and 1475 (2-A) (E).

40 11 M.R.S. §2-715.

41 See Credit Acceptance Corporation v. Banks, WL 1999 WL 1204881 (in FTC Holder case, court refused to consider on appeal Plaintiff’s claim that consumer did not mitigate damages because Plaintiff failed to raise this defense at trial).


43 11 M.R.S. §2-314 (2) (c). But there can be additional measures as well. See Innis v. Method Buick-Opel, Inc. 506 A.2d 212 (Me. 1986) (a substantial impairment can be a defect that shakes the buyer’s faith or undermines his confidence in the reliability and integrity of the purchased item).


45 To prove common law fraud Mr. Joad must establish:

1. the dealer made a false representation of material fact;
2. the dealer knew the representation was false;
3. the dealer was making this false representation in order to get Mr. Joad to buy the Pathfinder;
4. It was reasonable for Mr. Joad to rely on the dealer’s promise; and
5. Mr. Joad was damaged by the misrepresentation.


46 See Guidelines on Trade Regulation Rule Conserving Preservation of Consumers’ Claims or Defenses, 41 Fed. Reg. 20,023-024 (1976). The commentary provides that “[t]he rule does apply to all claims or defenses connected with the transaction, whether in tort or contract.” Id. at 20,024.

47 See e.g., Beaulieu v. Dorsey, 562 A.2d 678 (Me. 1989) (attorney fees of $18,000 awarded in suit for $610 down payment on defective table and chairs).

48 Dealer preparation fees are simply dealer extra charges.
They are not required by statute and consumers can certainly bargain and refuse to pay them. If a dealer does decide to charge a document preparation fee Maine law requires the dealer to first post notice of the charge on the car being sold. This is so consumers will not be surprised when the purchase contract (the Buyer’s Order) adds extra dollars for document “preparation” to an already agreed upon price. See 29A M.R.S. §653-A. Further, if a dealer has advertised a car at a specific price, as Happiness Motors did, that price must include any document preparation fees or other extra charges. In other words, extra charges cannot deceptively be added to an advertised or agreed upon price.


51 Approximately three fourths of all consumers purchasing a car take out a loan. Perhaps eighty percent of auto loans are financed by the car dealer. The dealer sometimes provides the financing itself (e.g., a “Buy Here Pay Here” dealer) or it will arrange for a third-party lender to take on the loan as an assignee. The third-party lender can establish a “buy rate” for the customer. The lender then allows the dealer to add to the finance charge. For example, assume that Last Chance Finance established a 16% APR buy rate. This means Happiness Motors added almost two percentage points to this buy rate. The dealer then will receive money back from the lender. This payment is called “dealer reserve” and is one method lenders use to compensate dealers for the value they add by originating loans and finding financial resources. It has been estimated that during one year this practice can add over $25 billion nationally to the total costs of auto loans.


54 Secretary of State Used Car Sticker Rules (29-250 C.M.R. Ch. 104) 1(C)(2) (c).

55 See Thurber v. Bill Martin Chevrolet, Inc., 487 A.2d 631 (Me. 1985) (when car was sold for transportation in violation of the Used Car Information Act, the consumer received back his purchase price, a civil penalty, and his attorney fees, even though the contract specifically stated that the car was sold “as is/no state inspection/no warranty).

56 A consumer good is an item purchased for family, household or personal use.

57 11 M.R.S. 2-316 (5) (A).

58 In Maine, except for used car sales, when the seller of new or used consumer goods claims the item is being sold “AS IS,” this means only that it is being sold without an express warranty. The implied warranty cannot be disclaimed. Therefore, even the “as is” seller must repair serious implied warranty defects.

59 10 M.R.S. §1473.

60 15 U.S. Code § 2308.

61 10 M.R.S. §1477 (1).

62 10 M.R.S. §1476.

63 See 10 M.R.S. §1476 (4) and 10 M.R.S. §1477(3).

64 10 M.R.S. §1477(1).

65 5 M.R.S. § 213.

66 See e.g., VanVoorhees v. Dodge, 679 A. 2d 1077 (1996) (only attorney fees incurred pursuing UTPA violations can be awarded).

67 29A M.R.S. §1754 (1)(C).

68 Engines are not typically a State inspection item.

69 Pursuant to 29-A M.R.S. §1751 (2) the following parts of a used motor vehicle must be able to pass inspection:

A. Body components (including bumpers, fenders, doors, chassis frame);

B. Brakes (including transmission and reverse gears as well as park position)

C. Glazing (including windshield, side a rear windows);

D. Exhaust system (including muffler)

E. Horn;

F. Lights and directional signals (including wiring and switches);

G. Rearview mirrors;

H. Reflectors;

I. Running gear (e.g., suspension system, air bag);

J. Steering mechanism;

K. Safety belts;

L. Tires;

M. Windshield wipers;

N. Windshield washer system;

O. Catalytic Converter (after 1982); and

P. Filler neck restrictions (after 1982).

In order to pass inspection, the part must be “in good working order” and not pose a hazard to occupants or the public. See 29-A M.R.S. §1756 (1).


71 11 M.R.S. §2-715.

72 11 M.R.S. §2-508. See Zabriskie Chevrolet, Inc. v. Smith, 240 A. 2d 1205 (NJ 1968) (seller’s attempted replacement of a defective transmission in a new car with a transmission of unknown lineage was held an inadequate cure).

73 15 U.S.C. §2308 (b) (2). Violations of the Magnuson-
liability for seller misconduct under FTC Holder Rule limited to amount paid under credit contract). See also FTC Holder Rule Guideline at 41 Fed. Reg. 20,022, at 20,023-24 (1976) (emphasis added):

This limits a consumer to a refund of monies paid under the contract, in the event that an affirmative money recovery is sought. In other words, the consumer may assert, by way of claim or defense, a right not to pay all or part of the outstanding balance owed the creditor under the contract; but the consumer will not be entitled to receive from the creditor an affirmative recovery which exceeds the amounts of money the consumer has paid in....

87 A consumer remedy unknown to Mr. Joad that might have kept him from defaulting on his loan is found in the Maine Uniform Commercial Code (UCC), 11 M.R.S. §2-717, which could have allowed him to deduct any damages caused by the car dealer's breach of contract (e.g., a breach of warranty) from the amount he still owes Dust Bowl Finance.


89 Attorney fees can be awarded for violations of Maine's Unfair Trade Practices Act (UTPA), 5 M.R.S. § 213, the Used Car Information Act, 10 M.R.S §1476 (4), or the Magnuson-Moss Warranty Act, 15 U.S.C. §§2301-2312.

90 5 M.R.S. §213 (2) specifically awards consumers "reasonable attorney fees and costs."

91 See also Thruber v. Bill Martin Chevrolet, 487 A.2d 631 (Me. 1985) (purpose of attorney fees provision is to provide incentive to Bar to enforce the UTPA in cases where it would be financially impracticable for consumer to obtain effective legal counsel).

92 Beaulieu v. Dorsey, 562 A. 2d 678 (Me. 1989) (award of $18,000 in attorney fees reasonable even though suit was for $610 down payment on defective table and chairs).

93 National Consumer Law Center, *Federal Deception Law* §4.3.5 (9th ed. 2017). But see Alduridi v. Community Trust Bank, N.A. 1999 WL 969644 (Tenn. Ct. App.) which denied used car purchasers request for attorney fees because their attorney fees claim was based in part on the FTC Holder Rule and not entirely on an independent statutory or common law ground.


96 Attorney fees are recoverable pursuant to the UTPA only to extent that fees were earned pursuing UTPA claim. VanVoorhees v. Dodge, 679 A.2d 1077 (Me. 1996).
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Editor's Note: Amy Sneirson, executive director of Maine's Human Rights Commission, delivered the keynote address at this celebration on March 2, 2019, which was sponsored by the Bangor area branch of the National Association for the Advancement of Colored People (NAACP) and the University of Maine Division of Student Life.

I am incredibly honored to be here today sharing this celebration of Dr. Martin Luther King with you all. Each of us can immediately call up a picture of Dr. King, and bring to mind some of his inspiring, extraordinary words. His preaching about a vision of the future as color-blind and without discrimination was so compelling; even from recordings, when he is preaching about his magnificent vision you can see it, feel it, want it. Maybe that is why his legendary speeches about hope are so often what people refer to when they talk about his legacy. His feeling about what this country could be was so beautiful and honest and real, it was big enough to envelop us all and sweep us into it.

To discuss only Dr. King's hopes and dreams only gets at part of what made him so exceptional, though, only at half of his tremendous legacy, because he was a man all about taking action, forward and constant movement toward bettering us in this nation and as a human race. “We must keep moving,” he said. Even after Dr. King and his fellow revolutionaries (names you don’t often hear as often, like Rep. John Lewis, Whitney Young, James Farmer, Roy Wilkin, Asa Randolph) faced water cannons and attack dogs, he rejected hate and counseled using nonviolent action to create openings that would let people talk and find common ground that could help us get to the America he dreamed about. Dr. King was willing to lead the charge always, but reminded folks that every one had a part to play in the great drama of this nation, that this was all of our democracy and we each had to stand up and be counted about things that matter. He said, “Let nothing slow you up.”

Here at home dedicated Mainers were already doing that; right here in Bangor, African American soldiers were coming back from fighting for democracy in WWII and Korea but fighting discrimination at home because they couldn’t rent quality housing or get good jobs back here. Fort Dow is one place they could stay, and so there was a good-sized population of black veterans here in Bangor. Those veterans here in Maine and elsewhere were a huge influence on the civil rights movement of Dr. King. In the early 1960s the NAACP set up shop in Maine in Bangor and later there were NAACP chapters in Lewiston and then Portland. People like Bob and Gerry Talbot and Bill Burney, whose families were in Bangor for generations, and Glen Payne, and Michael Alpert, and Elizabeth Jonitis and Neville Knowles in Lewiston – they were all foot soldiers in the fight against discrimination here at home.

In so many ways the revolution Dr. King led was a brilliant success and led to new laws like the Civil Rights Act of 1964 and the Voting Rights Act of 1965, more integration and inclusion. Getting laws passed was part of the battle plan but not all of it. “It may be true that the law cannot make a man love me, but it can keep him from lynching me, and I think that’s pretty important,” said Dr. King. The law did not keep Dr. King alive much longer than when he said that, but even after his death he helped to bring about laws like the federal Fair Housing Act.

In Maine too, the first statewide antidiscrimination law was passed in 1965, a fair housing law. In 1968 the state created a task force on human rights. The following year, a bill by Peter Mills (our current Governor’s brother) sought to bar race and religious discrimination, a bill that changed to create a task force to study the issue. That task force became the Maine Human Rights Commission. The law was enacted in 1971 and the Commission opened for business in 1972 with Bob Talbot as its ED.

For 48 years, the Commission has been steadily combating discrimination in Bangor, Rangeley, Ft. Kent, Saco, and everywhere in between. The men and women who have...
worked at the Commission for all these years have been dedicated to calling out and stopping discrimination in our state. The work of the Commission isn’t fun, to be honest – it’s serious business. We are and always have been buried in paper and complaints, with not enough resources or authority. We answer calls all day from people who are upset and crying and need someone to help, to listen. There are only 13 of us, and we all are true believers in the cause of ending discrimination.

In the seven years that I’ve been Executive Director of the Commission, I’ve gotten to hear a lot of different perspectives about how people see discrimination and laws like the MHRA. Probably like a lot of you in this room, I see anti-discrimination laws as signs of social progress, long-overdue formal acknowledgements of the harm that society’s innate human biases cause if not challenged. When our agency finds that discrimination occurred and can offer a victim a tiny sliver of justice using laws patterned on the Fair Housing Act and Civil Rights Act, I am so grateful to warriors who fought and died alongside Dr. King. I truly believe that laws like these are in line with Maine’s “live and let live” values; most people don’t care what color you are or who you love so long as you love the Red Sox and shovel your walk after a storm.

Sometimes laws lead the way and people change their attitudes. Look at marriage equality for LGBTQ people. In 2010, polls showed that 48 percent of Americans were not in favor of marriage equality; in 2017, several years after the US Supreme Court decision ruling that marriage equality was the law of the land, 62 percent of Americans believed marriage equality was right. For people with disabilities, the passage of the Americans with Disabilities Act was life-altering; they could get on buses, and be in schools, and go to the movies. Now, tech companies are competing to hire people who are “neurodiverse,” or on the autism spectrum. The “Me Too” movement would never have happened at all if the Civil Rights Act of 1964 banning sex discrimination had not been enacted.

While I see these as all positive developments, sometimes changing laws to mandate behavior has the opposite effect. A lot of people in Maine and America see civil rights laws very differently than I do, as creating preferential treatment for a few people that comes at the unreasonable expense of the majority. People whose jobs have disappeared might see affirmative action programs as offering a hand up to everybody but them, and go quiet after pointing out their exclusion from help and being called racist. People who are devout Christians must bristle at being told their resistance to supporting marriage equality made them bigots.
It turns out that now is not so different than time when Dr. King was marching. We in Maine and around the country are hearing more, and louder, and angrier expressions of the viewpoint that people who are “other” – because of their race, or where they come from, or their religion – are taking more than their due.

So many folks like this have felt bitter about being told what to do, and being silenced by what they saw as political correctness. Turns out that people really resent being told that their point of view is inferior or uneducated, or evil, and they can double down and simmer on their anger, sometimes for years or until political circumstances change. This “hidden tension that is already alive” was very familiar to Dr. King.

All of us are familiar with the hidden tensions that are so often spoken of only in whispers. I grew up in Massachusetts where everyone was a liberal; yes, it is my secret shame to be from Massachusetts, the only thing worse than being from away. In my family and community, a lot of things weren’t spoken of, like money, or sickness, or race; if they were, it was in a whispered way, like “she has cancer” or “they live in that part of town.” There were lots of Portuguese families in our town but not in my schools – only on the other side of town. There were a lot of black kids in our schools, but almost all because they were bused in from Boston. I didn’t learn until much later that Massachusetts was in many ways incredibly racist and segregated, and that that was widely known in the African-American community. I didn’t know until much later that parents in my own town had resisted buses bringing black kids to our schools. I had taken for granted that everyone was accepted, but that was such a superficial understanding of reality. It wasn’t until I moved away from there that I was able to look back and see that how amazingly clueless I’d been about racism in my hometown.

It wasn’t until I moved to St. Louis, Missouri that I actually lived in an environment I’d consider to be integrated with respect to race, nationality, religion, etc. It was the first time there were equal amounts of white people and black people and brown people and beige people in my school, and in my neighborhood and in my city. The subject of race wasn’t hushed up – it was talked about because it couldn’t be avoided. It was the first time I had really deep conversations about race with people who were fighting for their own lives and equality; I didn’t know that I was learning about my own “white privilege” because no one used that term then, but I was. After I graduated law school, I stayed in Missouri for about five years to practice law, at first in the southern capitol, Jefferson City. I learned very quickly that women lawyers had to wear skirts to court, that legislators drank while in the state house, that race wasn’t spoken of, and that people had a strong dislike for hearing about what East Coast folks did or liked or felt. After seven years in Missouri, moving to Maine felt like coming home.

I’ve been fortunate for 20 years to live and work in Maine, and to raise my kids in a place where people are direct about their thoughts and feelings. Mainers are to the point, which I love. I’ve always been pretty straightforward, a characteristic that only got stronger during the five years that I worked as a civil rights attorney with the Maine Center on Deafness. People in the Deaf community are incredibly to-the-point, and generally aren’t all that trusting of hearing people who aren’t connected to the community, but they literally welcomed me with open arms; they also taught me American Sign Language, and broke down my lawyery exterior to expose my soft gooey insides, my non-lawyer humanity. The people in my family and community talk openly about race, and poverty, and immigration, and take action to volunteer, and house immigrants, and help people in need. I remember a time when my youngest was in elementary school and came to me to tell me she was learning about Native American history; she said very seriously, “Mommy, I hate white people.” I said, “Yeah, I hate white people too…. but you know we are white people, right?” So we talked about it, as we so often do, around the dinner table, about ourselves, and our neighbors, and people who are different, about assumptions, empathy, and perspective. It seems like at home and at work that’s what I’m always doing – talking about what’s on the surface and what’s subtext in what people say and are afraid to say, race, and, gender identity, and disabilities, and money, and government.

As part of my work, I get to talk to young people around Maine who don’t seem all that concerned about which bathroom people use, or whether a girl on the track team is wearing a hijab – they are focused more on stopping school shootings and saving the earth. Kids give me a lot of hope about where our country is heading, and especially my own kids, who are pretty awesome. So, over the past decade or so, I got to feeling pretty positive about where things were at in my little world. But I think maybe I was being a little clueless again, got too comfortable with how nice everything seemed
on the surface. At the same track meet where I was cheering on that girl running in a hijab, a kid with another track team hurled a comment at my other daughter about being Jewish. I didn't realize that that was just one example of what had been hidden to me in my liberal bubble of happiness. I have been doing so much talking, and not enough listening.

It turns out that now is not so different than time when Dr. King was marching. We in Maine and around the country are hearing more, and louder, and angrier expressions of the viewpoint that people who are “other” – because of their race, or where they come from, or their religion – are taking more than their due. I am heartbroken when I hear rhetoric in Maine and elsewhere about people wanting things to be more like they used to be, with all the spoken and unspoken explanations for what that means. If you are a person who is “other,” returning to how things used to be means moving backwards to a time when you had no right to equal opportunity in work or housing or voting or education. Maine used to be a place where people of color, and Jews and Catholics, and French people, were barred from a lot of places, and it is hard not to see the specter of hatred, or racism, or other “isms,” in many people’s calling that the good old days. When transgender people are followed and threatened for using the bathroom, I try really hard to understand a faith that demands that. I am crushed when I see just how many people in Maine and America are loudly contending that immigrants and asylum seekers are a danger to be kept out at all costs when all studies seem to indicate just the opposite. There but for the grace of God go I. Can it be possible that in our country there are white pride rallies with torches and people chanting “Jews will not replace us”? For the first time in my life I have actually been afraid for my and my kids’ safety just because I’m Jewish. It seems like we are right back where Dr. King was in the 1960s – all the old prejudices and hatreds have been dredged back up and are as virulent as ever. How can this be? And what can one person do in the face of all this anger and division in our state and nation, never mind genocide of Rohingya people in Myanmar, Uighurs in concentration camps in China… I’ve felt hopeless and helpless far too often.

You would think that having a job at the MHRC would give me the perfect platform for addressing human dignity and fundamental differences of opinion about how we as human beings should treat each other, but it isn’t always that way. Because we are an investigating agency, we don’t take sides while we are investigating cases; we have to stay neutral at all times and make sure that the public, courts and legislature continue to see us that way. When we do find that discrimination likely occurred we advocate for the victim and public interest.

The rest of the time, though, I get really frustrated at feeling unable to publicly express concern when I read about hate and bias incidents in the news; as Dr. King noted “our lives begin to end the day we become silent about things that matter.” When no one responds to those incidents, that silence can often be taken as assent. On the flip side, it’s easy to characterize the people who make biased comments as just mistaken, or uneducated, but that doesn’t fix anything, just cements each of us in our own point of view. We stay in pleasing silos that reflect our own views as Facebook algorithms feed each of us the news we want to read or already read. It doesn’t help.

Dr. King lived in times like this too, and people asked him the same sorts of questions – what can one person do? He knew that “there are no broad highways that lead us easily and inevitably to quick solutions. But we must keep going.” He saw that revolution was not one man’s, not one race’s, but was every person’s. He urged action by every person, big steps and little ones, toward better human race. “If you can’t fly, run; if you can’t run, walk; if you can’t walk, crawl; but by all means keep moving.” Other heroes remind us that this is all of our battle to save the soul of America. Thurgood Marshall said “where you see wrong or inequality or injustice, speak out, because this is your country. This is your democracy. Make it. Protect it. Pass it on.”

For myself, I had to find something to do to call out and counter the increasing intolerance, bias and hate I was seeing. About 1.5 years ago, I started reaching out to Maine groups that worked with traditionally-targeted populations to ask if each would be interested in working to create a coalition for all Mainers. Our agency’s paralegal stepped up to help, even though it isn’t part of her job. The idea was pretty simple: that Mainers could and would collectively stick up for each other when there was bias or hate directed at one group of us. Having a coalition would allow us to learn when groups were experiencing bias and hate, since there are not consistent laws or even terms for reporting and tracking bias and hate crimes in Maine or elsewhere. People in targeted communities tend to close ranks, which is understandable, but which can have the unfortunate effect of keeping people outside a given community from knowing when there are bias or hate incidents happening to those within it. People in the Muslim community know how often women or girls in hijabs are being harassed, but others don’t know that. People in the disability community know how often facilities are inaccessible, but others don’t know that. People within the LGBTQ community know how often slurs shouted at them, but others don’t know that. What if traditionally targeted groups actually talked to each other to share information and oppose bias in a unified way? What if all Mainers opposed hate and bias and discrimination wherever it happened? Wouldn’t that be louder?

As I started naively emailing around to people, sort of flailing around, we were fortunate to connect with Steve Wessler, a hate prevention expert here in Maine who had started a civil rights unit at the Office of the Maine Attorney General, and
One thing I know is that each of us can change our communities, our state, our nation, our world for the better by taking action and making connections, by reaching across the divide to talk. And to listen.

who had gone on to do international work on hate and bias. Steve immediately jumped in and became a partner in this coalition we were creating. As other groups started to respond to our invitations, we were really heartened at the enthusiastic responses we got. One by one, groups said “yes, I want to be part of that!” It reminds me of something Robert Kennedy said: “Each time a man stands up for an ideal, or acts to improve the lot of others, or strikes out against injustice, he sends forth a tiny ripple of hope...” People respond to that hope. Over the past year, we have formalized our coalition, which is called unifymaine, and we have 14 nonprofit groups as members so far, representing diverse stakeholders with respect to disability, religion, sex, race, [and] national origin/ancestry. The Commission is just one member of unifymaine. We act collectively to call out bias and hate when it happens due to a person’s innate characteristics, and we stand up for each other. It’s a matter of choice: groups that want to sign onto a public statement about a particular bias or hate incident can do so, or not; no one has to explain why they do so or don’t. Sometimes when the Commission can’t comment on something, unifymaine still does, which is fantastic. At least someone says something. Dr. King thought of all this before a long time ago, of course. He said “together we can and should unite our strength for the wise preservation, not of races in general, but of the one race we all constitute – the human race.” We are right now planning our first outreach events, which will take place here in Bangor and then around Maine. I’m really excited to announce that we are also planning an inaugural human rights conference in Maine to occur in December, in celebration of International Human Rights Day.

Despite all these hopeful developments, we are not naïve. Dr. King understood how hard it can be to change hearts and minds, and break down barriers between “us” and “them.” People do not change their deeply-held beliefs easily or quickly, and definitely don’t do so just because someone else tells them they are ignorant or bigoted; often being challenged leads people to cling to their views ever more strongly as part of their very identities. Being able to have discussions about ideas with which we disagree is hard but necessary. This is the point at which Dr. King was off-the-charts radical, because he could see that in pushing back on discrimination, hate just leads to more hate. He said “somebody must have sense enough and morality enough to cut off the chain of hate and the chain of evil in the universe. And you do that with love. We must discover the power of love, the redemptive power of love. And when we discover that we will be able to make of this old world a new world. We will be able to make men better. Love is the only way. We must in strength and humility meet hate with love.” The notion of applying love and humility instead of shame to engage those with whom we don’t agree is truly revolutionary. Dr. King saw that we need action to open these hard conversations, so we can keep moving toward bridging what separates us.

Times like now – when people are saying what they really think, even when it’s hard to hear – offer an opportunity to have the discussions people have been afraid to have. Since right now everyone seems to be saying every sort of caustic thing they are thinking, I am mindful of Dr. King’s warning that “it would be fatal for the nation to overlook the urgency of the moment.”

This is a moment in time when each of us can make a difference in some way to make our communities, state, and country better. Each of us can take small steps, or big ones – start a conversation, make a connection, join a group, go to a meeting or rally, call your representative, go to legislature, help your neighbor, speak up when you see something happening that is just not right, ask why. Seize the opening. Going beyond just the initial shock of the hurtful words or action to what led to it, and working to understand each other’s perspectives, finding empathy and common ground, can help us knit together the divisions in our communities. Less us and them, more connections and conversations, even hard ones. Especially hard ones.

I generally don’t think of myself as an optimist, but it turns out maybe I am, more than I realized. Maybe my need to do something was hope, rather than desperation. One thing I know is that each of us can change our communities, our state, our nation, our world for the better by taking action and making connections, by reaching across the divide to talk. And to listen. Marian Wright Edelman, a civil rights hero in her own right, said “A lot of people are waiting for Martin Luther King or Mahatma Gandhi to come back—but they are gone. We are it. It is up to us. It is up to you.”

She’s right, and so was Dr. King. It is up to me, and to you, to keep moving forward in what Dr. King called “the long and bitter – but beautiful – struggle for a new world.” So, let’s keep moving. It’s up to us.

Thank you.

AMY SNEIRSON is executive director of the Maine Human Rights Commission. She may be reached at amy.sneirson@mhrc.maine.gov.
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E-Filing: It's a Big Deal

By Laura M. O’Hanlon

For nearly two years, I have been speaking with Maine lawyers and others about the Judicial Branch’s conversion from a paper-based format to a digital system. Reactions to my unusual missionary-like hobby have varied, but upon learning of the impending transition, many listeners shrugged, mention that we have been using PACER for years, and tell me they don’t expect much change for lawyers.

So, why have I along with several others committed our professional and personal time to studying these issues, responding to the Supreme Judicial Court’s calls for comments, and encouraging others to get involved in the conversation? The answer is simple: this is a big deal.

A digital revolution is upon us. Change is long overdue, but there will be a lot to it. And, the stakes are very high for individuals, society, and the Judicial Branch as an institution.

The state court e-filing system will be different from (and in many ways better than) PACER. State and federal court case types, case volumes, and resource allocations are not comparable. Of note, the state courts process a larger volume of cases, including those affecting very personal matters, and they provide service to unrepresented litigants at rates far above those in the federal courts. Accordingly, the Maine court procedures and rules will be much more detailed than those in the federal courts.

Digital systems will bring welcome benefits and new challenges. Transitions for the bench and bar will be dramatic. And, our professional lives as we know them will change.

Digital Transformation Has Begun

In her 2019 State of the Judiciary address to the Legislature, Chief Justice Saufley described the e-filing/digital case management system initiative as “… one of the most complex projects [she has] ever been involved with in Government.” Coming from a seasoned public servant and three-term leader of a chronically underfunded branch of state government, this is a profound statement.

To tackle complicated questions and assist the Judicial Branch in planning for its digital future, the Supreme Judicial Court (SJC) has been seeking input and commentary. In 2017, the Chief Justice convened a widely representative stakeholder Transparency and Privacy Task Force (TAP) to study the issues and offer policy recommendations about digital court records access. After months of research and analysis, TAP outlined a cautious-incremental approach. It advised the Maine Judicial Branch (MJB) to: start slowly, by offering remote access for parties and their lawyers only, and providing statewide access to public information via kiosks located at every courthouse; consider user-feedback and evaluate the functionality of the new system once online; and adjust policies governing the extent of and mechanisms for access regularly. At the end of 2017, the SJC solicited written comments targeted at TAP’s recommendations. Subsequently, at the outset of a June 2018 public hearing, the Chief Justice announced the Court “determined that digital case records that are public records will, in most instances, be available on the internet… [concluding] creating a digital case records system that could only be accessed at a courthouse terminal, as had initially been proposed, simply would not work for the great majority of the public’s needs.”

In January 2019, the SJC released proposed legislation codifying its draft digital court records access rules. The bill ultimately was not presented to the Legislature, and, in February 2019, the SJC released draft digital court records access and related procedural rules. In brief, those rules reflect the SJC’s decision that in case types comprising approximately 85 percent of the annual caseload, case records will be publicly available on the internet. Specifically, digital case records in traffic infractions, criminal, and most civil matters, with a few exceptions, will be publicly available. Other case types (such as adoption, child protection, juvenile, and mental health civil commitment records) will, with a few exceptions, not be publicly available. Family matters, including divorces, will be treated differently; the nature of the proceedings and summaries of judicial actions will be public, but filings between and among the parties will not be public. Some other types of information (such as social security numbers, bank account numbers, and medical records) will not be available to the public.
Following the release of the draft legislation and rules, the SJC solicited comments during January and March 2019; and, in May 2019, the Court opened a comment period regarding certain family matter court forms. It is anticipated that the SJC will post a new set of proposed rules for comment in fall 2019.

Beyond the specific court rules regarding access to individual case records, very little information has been made available to the public about the Maine-specific configuration of the Tyler system and how unrepresented individuals and others with specialized needs will be able to access and use it, how parties and nonparties will become aware that their personal information is online, or the MJB’s plan for implementation. Work with the technology vendor and stakeholder representatives around these issues has begun, and I have no doubt that by the time you are reading this the MJB will have published easily understandable information about how the digital tools will work, how people will know about their rights to access or protect information, and how the Judicial Branch plans to implement the new system; and the SJC will have scheduled multiple sessions with the Bar, regional meetings for the public, and more stakeholder meetings to gather additional feedback. Such public notice of upcoming changes will reinforce the importance of government transparency, facilitate professional planning, and provide the additional context needed to increase the likelihood of receiving informed commentary from the Bar.

Change is Overdue

Clearly, changes are necessary. The court system’s current database is decades old, and the clerks’ offices handle files much in the same way they did in the 1930s. The MJB estimates that more than five million new pieces of paper are filed in Maine’s courts each year; those pieces of paper are processed, filed, and stored in clerks’ offices, rented-spaces, and Maine State Archives. Court data is compiled using an electronic system that if it were in physical form would have duct tape and bubble gum as core components. Seemingly routine data requests take inordinate amounts of human intervention and it would take hours to explain the process to those unfamiliar with the way court data is stored. Discrete pieces of information are entered many times throughout the electronic lifecycle of a case, causing duplication of effort and the potential for mistakes at each point of entry.

There will be many benefits to the new system, efficiencies will be realized, and some costs will be reduced. Lawyers will be able to file and serve pleadings, and monitor cases from the convenience of their offices. Unrepresented parties will have access to guided interviews and a document assembly program, which will make it technologically easier to file or respond to lawsuits. Eventually, clerks’ data entry duties will diminish and staff time may be reallocated to tasks that better assist the public. The new system will improve public safety, by allowing information exchanges among courts, law
As a profession, it is imperative that we work to ensure the availability of meaningful access to justice for all. Moving from a paper-based court system to an electronic one will revolutionize the way courts provide service to the public; however, certain populations will not realize the benefits of a new system without special attention to their needs.22

enforcement, prosecutors, defense attorneys, and state and federal agencies, and by reducing errors made during multiple inputs of the same data.

In addition, the Judicial Branch will be able to provide aggregated data and more details about its caseload management, times to resolution, and other performance metrics. The public, media, and Legislature will have more information about taxpayer-funded expenditures, case processing times, judicial performance, and resource needs.

It’s a Big Deal Because The Stakes Are Very High

The digital transformation has the potential to allow the MJB to provide even better public service for the people of Maine. But, as with all things promising great gain, there is great risk and much work to be done. For your consideration, I provide a brief outline of several major areas requiring the Bar’s attention.

Ethics Issues

New court records access policies and procedures adopted by the SJC will impose additional responsibilities on lawyers with respect to managing confidential and sensitive client information. As part of our duties to act competently and diligently and to protect clients’ best interests, lawyers representing clients will need to understand what those duties mean in a digital world. We are expected to keep client information secure and notify clients after breaches.16 In the near term, Maine lawyers may be expected to keep up with all of “the benefits and risks associated with technology,”17 which is a tall order in an ever-evolving field.

Additionally, litigators will need to (re-)familiarize themselves with various procedural mechanisms and consider their utility in protecting the personal privacy (and proprietary business and financial) interests of their clients, particularly when the personally identifying or sensitive information is not necessary to the understanding of the case; and to seek access to information, when it is in their client’s best interest to do so.18

Moreover, with digital court records, filers will shoulder extensive obligations. For example, the February 2019 draft Digital Court Records Access Rule 9 states, “[i]t is the responsibility of the filing party to ensure that sealed, impounded, or nonpublic cases, documents, and information are redacted and/or submitted to the court in accordance with this rule.”19 Subpart (a) instructs filers in this way: “[f]or any cases designated as sealed, impounded, or nonpublic by federal or state law, court rule, court order, or administrative order, every filing must be clearly and conspicuously marked, ‘NOT FOR PUBLIC DISCLOSURE…’” and subpart (d) warns “[i]f any filed document does not comply with the requirements of these rules, a court shall, upon motion or its own initiative, order the filed document returned, and that document shall be deemed not to have been filed. A court may impose sanctions on any party or person filing a noncompliant document.”20

Given the volume of state and federal laws enacted and amended each year,21 this will be a substantial undertaking for Maine lawyers and an impossible hurdle for unrepresented litigants.

Law Practice Management Issues

In addition to mastering different methods of interfacing with the courts and adjusting our own work habits so that we are reading more on screen and less on paper, we will need to learn new ways of handling party and non-party information. As the profession begins to understand its heightened obligations relative to sensitive client information, lawyers will also need to create or modify the language of client engagement letters and contracts outside entities; to think more broadly about how much detail to include in court filings and when to seek court protection of information or documents; and to (re)structure office information management systems, both to protect client information and to prevent unauthorized access. The new rules may provide incentives for lawyers to learn fresh litigation and transactional strategies, and skills to manage client expectations related to digital records as well.

Access to Justice Issues

As a profession, it is imperative that we work to ensure the availability of meaningful access to justice for all. Moving from a paper-based court system to an electronic one will revolutionize the way courts provide service to the public; however, certain populations will not realize the benefits of a new system without special attention to their needs.22

While interactive court forms may assist unrepresented litigants23 to create or respond to pleadings, and online information will allow users to follow their cases from any device from anywhere, for those who do not have computers, phones, credit cards or bank accounts; for those who do not speak English;24 for those with visual impairments; and for those who cannot read, there
will be great challenges in the digital arena. For those seeking to hide from former abusive partners or other dangerous individuals, to avoid identity theft, or to keep their children safe, there are a whole host of issues to tackle. For those with unreliable broadband access, unstable transportation, or communities without libraries, questions of parity abound. These challenges are not insurmountable, but they reflect a mere fraction of the details that must be considered and planned for during the next year.

Public Trust & Confidence and Individual Privacy

One of the most important questions that the SJC must answer before e-filing rolls out in the first judicial region is how to balance the public’s right to governmental transparency with personal privacy rights in a complex technological context and evolving legal landscape. In more concrete terms, the SJC must determine which digital case records will be available to the public through the internet by weighing the tradition and laws regarding transparency of court operations against the risks of providing instant and enduring access to private details of litigants’ and nonparties’ lives.

This is not only about whether the media gets facts for an individual story or may publish the photograph of a witness to facilitate community safety, it is also about how and when the media, in its role of informing the public, and members of the public themselves are able to monitor the operations of a powerful and vital branch of government. It is not just whether a litigant can prevent reports of her child’s temporary bed-wetting from being fodder for social media trolls and becoming part of his permanent digital identity, it is also about protecting the most vulnerable from unnecessary risk and indignities.

When those of us who have been studying these issues for 15 years, five years, two years, start to think we have some answers, we develop even more questions about the best way to strike the right balance. This seems like a big deal, right?

It’s Important That We Get It Right

The profession and the public need your thoughts and voice. Each of you has a vantage point and specific experiences that would help identify issues and fashion solutions. I am not asking you to take up an unusual hobby like mine, but, for the benefit of your practice, your colleagues, future lawyers, underpaid clerks, overworked judges, members of the public, and the Judicial Branch, please get involved. Consider learning more, by monitoring the MJB web notices, reading draft rules and policy proposals, attending informational sessions; contacting the Maine State Bar Association, MSBA section leaders, local bar associations, Court Rule Advisory Committees, and other professional organizations to find out what they know, what they are doing on this front, and how you might be of service. Become a part of this important conversation, by offering your comments and suggestions to assist the Maine Judicial Branch as it takes this giant leap into its technological future.

Nella Fantasia

Without serious contemplation and input from the Maine Bar, I predict the SJC will promulgate rules and the Judicial Branch will roll out a new system, and then members of the Bar (and public) will raise important concerns and suggestions. There will be unnecessary angst, lost efficiency, additional costs, and backtracking. It is my hope that, as members of the Bar and experienced court-users, we will come together, to debate the issues, find solutions to the thorny questions, and get involved at the earliest possible point to help create the best system for the public, the courts, and the Bar; and to support the Judicial Branch in its mission “to administer justice by providing a safe, accessible, efficient and impartial system of dispute resolution that serves the public interest, protects individual rights, and instills respect for the law.”

It is a big deal.
The stakes are very high.
It is important that we get this right.

From 2002-2017, LAURA M. O’HANLON held a variety of positions within the Judicial Branch; she had oversight responsibilities for process improvement, statistical reporting, publications, web-services, and access to justice initiatives; and served on the MJB’s Steering Committee and Project Oversight Group for the e-filing/CMS project. Currently, she is Associate General Counsel for Bath Iron Works Corporation and can be reached at l.ohanlon@aol.com.

A digital revolution is upon us. Change is long overdue, but there will be a lot to it. And, the stakes are very high for individuals, society, and the Judicial Branch as an institution.
1 The views in this piece are those of the author and may not reflect the opinions of any of her current or former employers or clients; or any organizations.


3 In 2016, the Maine Judicial Branch (MJB) signed a contract with Tyler Technologies to develop its e-filing and case management systems; and in 2019, the State’s prosecutors contracted with Tyler for their needs as well. See https://www.govtech.com/biz/Tyler-Technologies-Wins-Job-Updating-Court-Systems-in-Maine.html.


E-filing is expected to roll-out in Penobscot and Piscataquis counties in fall 2020.


6 Transparency and Privacy Task Force (TAP) made 18 recommendations, and proposed a summary policy, an administrative order, and two rules of procedure. TAP’s webpage, http://www.courts.maine.gov/maine_courts/committees/tap/.

7 2017 written comments. TAP’s webpage, supra note 6.

8 June 2018 public hearing audio. TAP’s webpage, supra note 6.


10 See SOJ 2019, supra note 5.

11 As of this writing, the MJB has not yet posted the Jan. or Mar. 2019 public comments. They can be viewed on the Center for Transparency and Privacy (CTAP) website, https://www.ctap.me.


13 See SOJ 2019, supra note 5.

14 Id.


16 See, e.g., Maine Professional Ethics Commission Opinions: #220–Cyberattack and Data Breach: The Ethics of Prevention and Response (April 11, 2019); #207–The Ethics of Cloud Computing and Storage (January 8, 2013); #194–Client Confidences: Confidential firm data held electronically and handled by technicians for third-party vendors (June 30, 2008), https://www.mebaroversers.org/attorney_services/ethics_opinions.html; See also ABA Formal Opinions: # 483–Lawyers’ Obligations After an Electronic Data Breach or Cyber-attack (October 17, 2018); #477–Securing Communication of Client Information (May 2017), https://www.americanbar.org/groups/professional_responsibility/publications/ethics_opinions/aba_formal_ethics_opinions_index_by_issue_dates/.

17 Maine Rule of Professional Conduct 1.1 provides: “A lawyer shall provide competent representation to a client. Competent representation requires the legal knowledge, skill, thoroughness and preparation reasonably necessary for the representation.” Maine has not yet adopted the ABA Model Rule 1.1 language stating that lawyers should keep abreast of changes in “the benefits and risks associated with technology.”

18 See, e.g., M.R. Civ. P. Rules 26(c), 79(b), 102, 133(c); M.R. U. Crim. P. Rules 16(b)(6), 17(d), 17A; see also M.R. DCRA, Rules 7 & 8, supra note 9.

19 Id. Rule 9 (emphasis added).

20 Id. at 9(a)(d) (emphasis added).

21 For example, building upon the Legislature’s Office of Policy and Legal Analysis’ research, TAP identified hundreds of state laws related to confidential information and created an overview of categories regarded as confidential by the Maine Legislature. TAP’s webpage (VA & VII.D), supra note 6. In light of TAP’s deadlines, a review of federal law was not possible.

22 See Legal Service Provider Comments. CTAP’s website, supra note 11.


24 Other district court dockets involve many unrepresented litigants, but the data on such cases has not be been collected and reported by the MJB.

25 “According to interpreter-usage data as of June 2017, the top expenditures statewide for [court] language services were highest in the following languages: Somali, ASL, Arabic, Spanish, French, Vietnamese, Swahili, Chinese (including Mandarin, Cantonese, and Taiwanese), and Khmer, in that order, with some [judicial] regions reporting additional needs beyond these top statewide language requests.” MJB Language Access Plan (Jan. 1, 2019 – Dec. 31, 2020), pp. 10-11, https://www.courts.maine.gov/access/mjb-language-access-plan.pdf.


27 Of course, if you need a new hobby, those working on these issues would welcome you to the club. There is no requirement that members agree with one another; in fact, we honor diversity of view-point and encourage robust debate. A sense of humor is a prerequisite for continued involvement, however.

28 On page 13 of the MJB’s e-filing in Maine Report to the Joint Standing Committee on Appropriations and Financial Affairs and the Joint Standing Committee on Judiciary (July 2, 2012), the State Court Administrator wrote, “[f]or any state, [e-filing] is a multi-year project that must be well planned. … Careful planning is the key to success; without that planning, the potential for wasting taxpayer dollars is a real risk, as they discovered in California.,” https://www.courts.maine.gov/reports_pubs/reports/pdf/eFiling%20Maine%20Report%207-01-12.pdf.
This past spring, the Maine State Bar Association invited Maine students to participate in its Law Day essay and art poster contests. Students in grades 9-12 were eligible for the essay contest and students in grades 4-8 were eligible for the art poster contest.

Artists were prompted to create a poster to illustrate the same. The MSBA received seven essays from students at four schools and 27 posters from students at five schools.

MSBA President Eric Columber, Immediate Past President Susan Driscoll, and Executive Director Angela Weston served as judges. Although we conducted blind judging, the art poster contest winners hailed from the same school, as did the essay contest winners. Kaelyn Lawlor, a ninth grader at Hodgdon Middle/High School, placed first for her essay, "Boundaries on My Freedoms," and Meghan Peters, also a ninth grader at Hodgdon Middle/High School, was runner-up for her essay, "Freedom of Speech and Press with Minor Limitations."

Kaelyn and Meghan received $75 and $50 prizes, respectively, and their teacher, Linda Garcia, received $125. Sophie Harmon and Sam Dyndiuk, who won the art contest, each received $50. Their teacher, Miranda Grant, received $100. The Maine State Bar Association would like to thank the Maine educators, students, and their families for participating in the 2019 Law Day Contest.
LAW DAY 2019

First Place, Art Poster

Winner: Grades 4-5
Sophie Harmon
Grade 5
Teacher: Miranda Grant
Beech Hill School, Otis
LAW DAY 2019  Second Place, Art Poster

Winner: Grades 6-8
Samuel Dyndiuk
Grade 6
Teacher: Miranda Grant
Beech Hill School, Otis
The U.S. Constitution outlines the powers and duties of the three branches of the federal government and its relationship with the states. The First Amendment to the U.S. Constitution guarantees the rights to freedom of speech and of the press, to assemble peaceably and to petition the government for a redress of grievances. These guarantees affect me every day and empower me as a citizen seeking to enjoy life, liberty and the pursuit of happiness. Because of the First Amendment, I can speak freely, voice my opinion about issues large and small, and not fear censorship, or punishment from government officials who may not like what I say. The free press guarantee enables me to read and learn about events near and far, including news of when oppressive governments around the world shut down the Internet and wireless networks to silence public protest, which makes me appreciate our U.S. Constitution even more. But, when I think about how the U.S. Constitution affects my daily life, I start with the Bill of Rights rather than the structure of government. My government guarantees real freedom, however, it is not about having no limitations; rather it is about finding liberation within and also through limitation.

Freedom of speech is a confusing concept to grasp, but it is a colossal part of the foundation in my free society. This will give people more confidence when they’re talking about current events. It’ll inhibit social interaction, but the biggest reason of all is understanding their rights will keep them out of jail. Even the supreme court struggles to determine what exactly constitutes protected speech. Freedom of speech—the right to express opinions without government restraint—is a democratic ideal that dates back to ancient Greece. But, in the United States, the First Amendment guarantees free speech, though the United States, like all modern democracies, places limits on this freedom. In a series of landmark cases, the U.S. Supreme Court over the years has helped to define what types of speech are—and aren’t—protected under U.S. law. The Supreme Court declared in the case Schenck v. the United States in 1919 that individuals are not entitled to speech that presents a “clear and present danger” to society. For example, a person cannot falsely yell “fire” in a crowded theater because that speech doesn’t contribute to the range of ideas being discussed in society, yet the risk of someone getting injured is high (Bill of Rights Institute, 2019). Another example of this would be Miller v. California, which is a landmark decision by the United States Supreme Court wherein the court redefined its definition of obscenity from that of “utterly without socially redeeming value” to that which lacks “serious literary, artistic, political, or scientific value” (Bill of Rights Institute, 2019).

The freedom of the press, protected by the First Amendment, is critical to a democracy in which the government is accountable to the people. Free media functions as a watchdog that can investigate and report on government wrongdoing. It is also a vibrant marketplace of ideas, a vehicle for ordinary citizens to express themselves and gain exposure to a wide range of information and opinions (ACLU 2019). The rise of the national security state and the proliferation of new surveillance technologies have created new challenges to media freedom. The government has launched an unprecedented crackdown on whistleblowers, targeting journalists in order to find their sources. Whistleblowers face prosecution under the World War One-era Espionage Act for leaks to the press in the public interest. And, in the face of a growing surveillance apparatus, journalists must go to new lengths to protect sources and, by extension, the public’s right to know.

When I focus on these cornerstones of representative government calls on us to understand and protect these rights, as the U.S. Constitution proposes I feel that they tremendously impact my daily life. Free speech and press is something that most people often take for granted and is widely debated and often controlled. There are many parts of the world where free speech isn’t even something that someone like I would have. When words become controlled, it is a slippery slope to the controlling of other rights. This is what makes my right to free speech something that I cannot take for granted, and when that right is imposed upon, it should also be taken seriously. This case affects all of us today because it presents the local and federal government to determine what is appropriate or over the line when we are expressing ourselves.

I also feel that the freedom of the press affects my daily life. I think this because Americans take great pride in their press freedom. But the truth is, it’s under attack. This trend goes
beyond the current president and his administration branding credible news outlets as “fake news” and threatening journalists and leakers with lawsuits.

In conclusion, these freedoms in pact my daily life tremendously and I believe a free society can’t exist without free speech and free press. Because of the First Amendment, I can speak freely, voice my opinion about issues large and small, and not fear censorship, or punishment from government officials who may not like what I say. The free press guarantee enables me to read and learn about events near and far. But I do not have a free range with these freedoms. With the freedom of speech and the press, I have boundaries of what I can and cannot do or say and I have to remember these boundaries every day.

KAELYN LAWLOR is an incoming sophomore at Hodgdon Middle/High School in Hodgdon, Me. Her teacher, Linda S. Garcia, supervised this assignment. The essay is reprinted here as it was submitted to the Maine State Bar Association.

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wounded in combat many times and had received the Congressional Medal of Honor. After FBI agents obtained a tape recording of the meeting, federal prosecutors charged Alvarez with two counts of violating the Stolen Valor Act. It was a U.S. law that broadened the provisions of a previous U.S. law addressing the unauthorized wear, manufacture, or sale of any military decorations and medals. Alvarez was the first person to be convicted under the Stolen Valor Act. This case is an example of why not all speech should be free, and people can’t just say whatever they want. If everyone lied about their occupations and awards, no one would know what’s true or false.

Another example of lying is evident with 9/11 conspiracy theorists via social media. On September 11, 2001, 4 passenger planes were hijacked by Islamist terrorists. Just hours after the collapse of the New York Twin Towers, conspiracy theories surfaced online. A quote from one of the conspiracy theorists is, “Is it just me?” an internet user named David Rostcheck wrote, “or did anyone else recognize that it wasn’t the airplane impacts that blew up the World Trade Centre?” He along with many other people think that the 9/11 attacks were an inside job and the attacks were set up by the United States government. The BBC news had an online article about these conspiracy theories that included quotes from conspiracy theory believers. Since citizens have freedom of speech, BBC news was able to post that article.

Even though the Constitution guarantees freedom of press/speech, the government does not regulate some media. Print media are generally unregulated, and newspapers and magazines can usually print almost anything as long as they don’t slander anyone. The Internet has also gone largely uncontrolled, despite congressional efforts to restrict some controversial content. Broadcast media, however, are subject to the highest amount of government regulation. Radio and television broadcasters have to get a license from the government because, according to American law, the public owns the airwaves. The Federal Communications Commission (FCC) issues these licenses and is in charge of regulating the airwaves.

The freedom of speech for articles and information affects myself when I’m trying to look for reliable sources on my schoolwork. I am able to decipher what are usually lies and what is true. When the information is true, it usually has more sources behind it and is on a reliable website. When the information is false, there are usually fewer sources and more opinions about the topic. I think freedom of speech is a great thing to have, but it should have some limits. I also believe that there shouldn’t be that many government regulations on articles and other press related subjects. I think the idea that having a free society wouldn’t exit without free speech and press makes sense because the society wouldn’t be free if there wasn’t any freedom for the citizens. If there wasn’t freedom of speech and press, people wouldn’t be able to say what they believe and let other know about it. There should be some regulations but they should[n’t] be overridden with them. I think that freedom of speech and press are a necessity in the world today.

MEGHAN PETERS is an incoming sophomore at Hodgdon Middle/High School in Hodgdon, Me. Her teacher, Linda S. Garcia, supervised this assignment. The essay is reprinted here as it was submitted to the Maine State Bar Association.

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The Wait is Over

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Five Ways Attorneys Try to Reduce Stress... that Actually Increase Stress

As a professional coach to ambitious attorneys, I regularly meet with lawyers who are beyond stressed out. And it’s not like these first-time clients aren’t trying to dial down stress. To the contrary, most of them seek me out as a last resort because, despite having applied all sorts of supposed “expert” advice to feel calm and in charge, they are evermore sinking under the weight of these issues:

- Nearly impossible billable hours quotas
- Difficult clients
- Snowballing workload
- Insufficient personal time
- Elusive sense of satisfaction

The problem, I’ve come to realize, with successful attorneys who want to lighten their load but can’t seem to do it isn’t that they aren’t trying hard enough; after all, attorneys are pretty determined. The real reason attorneys can’t get out from under the overwhelm is that they’re using faulty stress-reduction tactics—many of them offered up by media as stress-busting “secrets.”

Here are five common ways that well-intentioned attorneys attempt to reduce stress that actually increase it, and suggestions for strategies more likely to work:

**Mistake #1: You attempt to manage stress.**

There are two major drawbacks to this common method of stress reduction. First, adding stress management as one more obligation on an already overflowing agenda of work and home responsibilities just exacerbates stress.

Stress is everywhere in a nation that is moving at an increasingly pressured pace—and there’s no way to control that. The only real way to minimize the impact of stress on you is to build your own resilience in the face of it.

Just like athletes do at the extraordinarily stressful Olympics, the idea is to put energy into performing well despite the stress. For you, resilience means zeroing in on what you do best so you can give it your all, eating foods that build energy rather than drain it, and spending time with people who boost rather than deflate your spirits.

**Mistake #2: You attempt to achieve work/life balance.**

In a world where technology allows us to be accessible around the clock from anywhere, work/life balance is an unattainable myth. That once-indelible line between home and work is no longer there, and so trying to divide personal and professional into two distinct compartments is a futile endeavor that brings on anxiety and a sense of ineffectiveness.

The better way to arrive at equilibrium is to view balance as an internal experience that you can promote by customizing your home and work environments to compose and center you. This means clearing away desk clutter, for example, or painting your living room a color that soothes you. Inner balance also comes from overseeing technology, turning it on and off to serve you, so that you aren’t constantly pulled away from home or work or whatever setting you’re in by pings and beeps from someplace else.
Mistake #3: You skimp on downtime to catch up at the office.
We have this crazy notion in our production-obsessed country that if we keep banging away at work, without coming up for air, we will get more done, surpass everyone else, and feel more successful. That approach makes about as much sense as doing the same concentrated, muscle-fatiguing workout seven days a week. Because just as our muscles grow weaker and become susceptible to injury without recovery time, so does our energy level—and therefore our resilience.

The truth is that regular breaks from work—throughout the workday, during evenings and weekends, on holidays and vacations—actually improve our productivity in the long run. People who sacrifice sleep end up being less attentive and effective, and studies show that professionals who don’t take vacations get sick more and promoted less. Lesson learned: if you really want to get ahead at the office, get the rest and relaxation you need to stay refreshed, competitive, and sharp.

Mistake #4: You try to burn through your “to do” list to bring relief.
There was once a time when the expectation that you could crush your entire “to do” list and feel satisfied at the end of a long work day was perfectly reasonable. But that time is long gone and it’s not coming back. With information spinning towards us non-stop from every direction, we are constantly thinking of new things we want to do, explore and have, and your “to do” list keeps growing.

So rather than equate a productive day with checking off every item, try accepting this new normal: every striving professional has a “to do” list that will never end. If you practice prioritizing, learn how to finish your day with anything less than the vital few left undone, and let the rest go until tomorrow, you will find yourself feeling steadily more accomplished instead of falling behind.

Mistake #5: You reward yourself in ways that aren’t really rewarding.
Our culture likes big splashes, and advertisers like big profits, so we’re conditioned to celebrate just as big when we work hard. The snag with this mentality is that we tend to deny ourselves for long stretches and then go all out when we accomplish a goal, which can lead to eating, drinking, or spending too much—all of which increases stress. Reward binging also runs contrary to the science of good habit formation, which shows that little rewards celebrating small wins are much more powerful reinforcers of positive habits and disciplined effort.

So give yourself smaller, more frequent, easy-to-implement incentives: a tasty healthful snack or a literal breath of fresh air in the middle of your workday, maybe lunch at the end of the week with someone who really makes you laugh, or a day at the beach with your family on the weekend. Choose rewards that you know will fuel your momentum, not deplete it, and you will be better prepared for whatever stressful circumstances lie ahead.

When we entered the inner sanctum, the Oracle taught us that the Law is a Lawyer Driven Process. At Camden Law, we take this as a mandate to think outside the box, to inspire others, and to pursue justice in a manner that honors the highest ideals of the profession. These core beliefs find full expression in our appellate work. Our firm, which includes three former Maine SJC clerks, has been involved in more than 20 appeals to the Law Court in the last year alone. Whether following precedent or blazing new legal paths, we are always up for the fight. If you are looking to refer an appeal to outside counsel—and you share our belief that the LLDP—put us in the driver’s seat. We know our way around the inner sanctum.
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JOIN MSBA! Now more than 2,750 members strong, the Maine State Bar Association is the largest and most active alliance of lawyers in Maine. Our members include active and inactive attorneys, judges, law professors, corporate counsel and government lawyers. The goal of the MSBA is to provide its members with membership services and benefits to enhance their practice and enrich their experience in the legal profession. Our MSBA leadership and professional staff are dedicated to meeting your high expectations of quality, commitment and service. There’s never been a better time to join the Maine State Bar Association!
"My mind is so relaxed here that I just came up with a great legal argument for a case I have been struggling with. So now I wonder - can I bill some of my time for staring at the ocean?"
Listening to Nat Hussey describe his journey to becoming a lawyer and lobsterman on Matinicus Island, it is not difficult to think of the lobster itself. Over its lifetime, the Maine lobster will shed its hard exoskeleton dozens of times, abandoning its old shell to grow a new one. Like the lobster, Hussey has been willing to adapt to entirely new worlds and adopt new modes of existence, all in service of continued growth. Although Hussey readily admits that he has not taken an easy path, he also takes satisfaction in knowing that his path is one of his own design. Hussey recently sat down with the Maine Bar Journal to discuss his interests.

MBJ: Tell us about your pastime of lobstering.
NH: Well, I am relatively new to the lobster fishery. I started in 2006 as a sternman on Matinicus Island. It is obviously very hard work, but you get to be outdoors on a boat. It’s not for everybody, though, because there is rotting fish and bad weather. But I enjoy it.

MBJ: How did the opportunity come up in 2006 to become a sternman on a lobster boat?
NH: It was at an inflection point in my life. I had been a solo practitioner for about 10 years. Then I worked in a couple of different state government agencies in human resources. I was ready for a change. Since I was acquainted with Matinicus and some of the folks out there, I decided to go out and try working on a boat. After a couple visits, I obsessed over it. I loved it. In terms of good advice, one of the older captains told me, “You’ll know in about five minutes whether it’s for you.” And I sure did. The whole thing enchanted me. I worked four or five seasons as a sternman,
and then had a really hare-brained idea about taking a traditional 15-foot rowboat called a peapod and fitting that with a solar panel and a winch to lobster. I tried to marry some old technology with new technology and did that for a couple of seasons. I also filled in on other people's boats.

**MBJ: What is it that you love about lobstering?**

NH: I grew up working outdoors. I didn’t have an indoor job until I was in college. Some part of me still really craves that. I love being on the water and I love being physical. I’d rather do that than go to a gym if I can get away with it. Interacting with the natural environment and having that really direct connection with nature provides a very deep kind of fundamental experience.

**MBJ: How did you get to Matinicus Island?**

NH: While I lived on the island, I worked in the one-room school as an Ed Tech and loved that. I later worked as Tax Collector for Matinicus Plantation. At one point, I also got involved in some litigation with 23 different defendants. They were mostly fisherman, but the Department of Marine Resources was also named as a defendant, and I represented three of those guys. I had intended not to practice after shifting to lobstering, but it was a fascinating case. I got back in a little at a time.

**MBJ: What is life like on the island?**

NH: Well, Matinicus Island is the most remote, year-round inhabited island off the coast of Maine and probably off the eastern seaboard. It’s 23 miles out to sea. It is very small, only one mile by two miles. It’s a very logistically challenging place to live because there are just two ferries a month. You either need your own boat, or you need to take the air service that brings the mail out twice a day. So, getting to and from the island is pretty challenging. It’s a small year-round community, with probably 50 people there in the dead of winter, and several times that in the summer. It is the most beautiful, quintessentially Maine place, but it is also very unique.

**MBJ: With only 50 residents in the winter, how do they survive?**

NH: Well, a lot of them are fishermen who make their living during the nine months between April and the end of the year. Some of them go year-round. Mostly, you try to save some money during the season so you can coast through and hang on, eating tree bark during the lean months. It gets quiet out there, but I absolutely loved the winters that I was able to be there.

**MBJ: At present, do you have a place on Matinicus?**

NH: Yes, I have a cape house.

**MBJ: And you live there a portion of the year?**

NH: I do. These days, it’s usually April to December. But there were probably six years where I was out there all year.

**MBJ: How’s the fishing on the island?**

NH: Well, I’m not supposed to tell you anything about that.

**MBJ: I thought so.**

NH: It’s the worst. I’m a small fry, so to speak. I have a 26-foot boat, which is pretty small, and I don’t go far out. I stick mostly right around the island. It’s changed since I started, and some years are better than others. It’s really hard work, but you’re out in the fresh air on the water. It’s a pretty special privilege to be able to do that.

**MBJ: Can you tell us what a typical day lobstering would look like?**

NH: It’s generally getting up really early, getting bait, and going out to haul about 200 to 300 traps on average. Some people get out to their boats at 5:00 a.m., and some people don’t go out until 6:00 or 7:00 a.m. Usually, there is one captain and either one or two crew people. After I get in from hauling, I return calls and emails and try to keep legal tasks moving.

**MBJ: After you put out the bait, do you get interest from the lobsters pretty quickly or does it take some time?**

NH: It depends on the time of year. In the early part of the season, the water is very cold and the lobsters move slowly. You have to leave the traps down for a week or so before you haul them back. In the height of the summer, you can haul them every couple of days and you’ll have lobsters. It varies a lot. I usually leave them about three days.

**MBJ: How do you get your lobsters to market?**

NH: We actually have a buyer on Matinicus who purchases the lobsters on island and uses a big boat to bring them back to the mainland. That’s the only way that it’s workable for me. I could not haul them in to the mainland to sell them.

**MBJ: Any interesting experiences you have had out on the water lobstering?**

NH: Being out on the water is always fascinating. You see a lot of things you just don’t normally see, like wildlife, porpoises, sunfish, and seals. During that crazy, hot summer of 2012, I was in a really shallow, warm area of the shore and caught something that looked like it had escaped from an aquarium. It was definitely not a fish you would normally see in this area. I drew a picture of it and somebody told me it was a triggerfish. The triggerfish is not native to Maine,
so it must have wandered up the coast due to the warm temperatures. We have a cultural dialogue going on about how the oceans are on their last leg. But, that’s not what you see when you are out on the water. There’s a lot of life out there and I feel very privileged to be able to experience it up close.

MBJ: Are there trends that you’ve seen in the lobster industry in the last couple years that are notable?  

NH: There were a couple of really fluky years when the water temperature was warm and that definitely disrupted the fishing cycle. During the last couple of years where I fish, it has been more or less business as usual and the water is still really pretty cold in shore. There’s a lot of news about how the Gulf of Maine is warming faster than anywhere else on the planet, but that’s not necessarily true close to shore, or at depth. The water actually cools off close to shore compared to how it acts way out in the Gulf.

MBJ: Is that where you would keep your traps, close to shore?  

NH: Yes, I am definitely a close-to-shore fisherman.

MBJ: So, would it be fair to say there are divergent narratives about the warming of the waters in relation to lobstering?  

NH: The people who fish way out would see more changes than I would. This is what I feel is happening. It is completely a “seat-of-the-pants” assessment, but the spring has been colder and wetter, and the fall seems to be warmer. So, the whole season feels like it has sort of slid a month on the calendar.

MBJ: Are you seeing any decrease or increase in lobsters?  

NH: I want to say that 2015 was a peak year overall. There is a natural cycle to it, but for me, no—I’m seeing roughly what I see every year.
My advice to anyone practicing who isn’t quite sure where they fit is to try different things that may seem crazy, like trying to practice and working/living in a remote environment. I spent a lot of years feeling like a square peg, and I am very grateful to now be in a position where I love my work. I also now trust that my other out-of-the-box experiences are actually assets to my practice, rather than just hare-brained midlife experiments.

MBJ: Currently, what are you observing in the market for Maine lobsters, especially in light of recent tariffs from China? Has this put a damper on demand?
NH: It’s still pretty good, considering the trade war. I feel like we’ve unfortunately handed a lot of exports over to Canada because they have a different relationship with the big foreign markets than we do. Still, the tariffs did not have a catastrophic effect on our price at the boat. Prices have actually been surprisingly stable.

MBJ: Do the Canadian lobsters have different requirements for size?
NH: They do. A lot of the Canadian fishermen do not have the minimum size like we do, but their seasons are more limited. So the Canadian method of conservation is to limit the time that you can fish, compared to how we do it here.

MBJ: Have you found that other lobstermen have been supportive?
NH: To me, they have been great. I know that the industry has a bit of a reputation for not always being welcoming, but I have been very fortunate. I’m not there just to strip-mine the resource and then come back to the mainland. I really love being out there on Matinicus and being part of the community.

MBJ: What’s the best advice you have ever received?
NH: I think it’s going to have something to do with not being afraid to try something different in life. My high school English teacher told me to “show rather than tell,” and that always stuck with me in writing, litigating, and even with kids. Then there’s Judy Potter’s timeless advice about turning bad facts into good facts; learning to look at things from multiple perspectives.

My advice to anyone practicing who isn’t quite sure where they fit is to try different things that may seem crazy, like trying to practice and working/living in a remote environment. I spent a lot of years feeling like a square peg, and I am very grateful to now be in a position where I love my work. I also now trust that my other out-of-the-box experiences are actually assets to my practice, rather than just hare-brained midlife experiments.

MBJ: Has that served you well?
NH: Yes, and made me terribly miserable at times too. Living out of the box is great sometimes and horrible other times, but I wouldn’t trade my path in life for anything else. Actually, I ran into Jim Tierney, a former Attorney General, in a bookstore right before law school started. I was terrified of law school and he just said, “Do your work, but don’t take it too seriously.” I think he knew that if you were in law school, you were going to be working hard so you didn’t need to add a layer of worry on top of that.

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 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.
As an attorney, you spend your career ensuring that the justice system works, first and foremost as an advocate who makes the best case for your client. As an officer of the court, you are serious about your obligation to administer justice fairly. The Maine Bar can take pride in its members’ dedication and integrity.

“Justice for all” is a promise at the core of the American democracy and our system of laws. We have enshrined the principle of equality under the law: that the same laws apply to each of us—and no one should be at a disadvantage because they cannot afford a lawyer.

Retired Justice Howard H. Dana, Jr. put it this way: “In our country, we have two lawyers, typically—one on either side of the case—and the problem is that there aren’t enough lawyers to represent the poor. This makes for an unfair battle and an unfair system of justice.”

Justice Dana served for many years on the Foundation’s Board of Directors. He created the Howard H. Dana, Jr. Fund at the Foundation to help us continue to carry out our mission far into the future—as our original goal states, “to facilitate the due administration of justice by all necessary and proper means.”

This year the Foundation is launching the Maine Justice Legacy Circle. Our goal is simple: to recognize and thank those members of the Bar (and others) who have included a gift to the Maine Justice Foundation in their will or estate plan, and to multiply those benefits by encouraging others to join them.

We want you to have the chance to make “justice for all” a reality for every Mainer.

The Maine Justice Foundation has a 35-year track record as an effective, trusted steward of funds for access to justice. We have been around since 1983, when a handful of legal aid champions—Howard Dana, Mary Schendel, Phyllis Givertz, Sumner Bernstein, Hugh Calkins, Duane Fitzgerald, John N. Kelly, Joseph Jabar, Francis Marsano, Robert C. Perkins, Jerry Petruccelli, Judy Potter, Sidney Wernick and L. Kinvin Wroth—met at the Roma, an Italian restaurant in downtown Portland. By the time they gavelled the meeting to a close, they had decided to incorporate a new foundation to fulfill the charitable goals of Maine’s Bar.

Mary Schendel was at that founding meeting, and she told us why she has chosen to leave the Foundation in her will:

“I’ve always believed in the promise of “liberty and justice for all.” As our country’s economic gap widens, so does our “justice gap” denying justice to too many. As a proud founder of the Maine Justice Foundation, the Lawyer of the Day, IOLTA, and the Campaign for Justice, I have dedicated time and resources to closing the justice gap, but more is needed. That is why my husband and I have included the Foundation in our estate plans. By making a gift in our wills we can have an impact into the future with the aim of someday fulfilling the promise of “liberty and justice for all.”
In Memoriam

The Maine Justice Foundation remembers with fondness the Honorable Kevin M. Cuddy, who died after a short illness on April 23, 2019.

Justice Cuddy graduated from Bucknell University in 1966 and then earned his law degree at Suffolk University. He was admitted to the Maine Bar in April 1973. Kevin had a four-decade career as a public servant and private attorney. He started his career as an Assistant U.S. Attorney and ended it as a Justice on Maine’s Superior Court. In between he was an attorney in private practice, founding the firm of Cuddy & Lanham in Bangor. Kevin devoted substantial time and expertise to organizations serving his community and the cause of justice. He served on the Board of the Maine Justice Foundation (then the Bar Foundation) and as President in 2003. The Foundation presented him with the 2008 Howard H. Dana, Jr. Award. He also served on the Board of Governors of the Maine Trial Lawyers Association, including as President.

Governor John Baldacci appointed Kevin to serve as a Justice on the Maine Superior Court in 2007, which he did until his retirement in 2014.

After his retirement, he continued to be a champion for access to justice, working with Legal Services for the Elderly and Maine Volunteer Lawyers Project, as well as many local boards and organizations near his home in Holden. The Maine Volunteer Lawyers Project honored Kevin posthumously with its Directors’ Award at the Maine State Bar Conference in June 2019.

Kevin is survived by his wife Carol of Holden and three sons.

Today the Foundation manages nearly $6 million in assets and is one of the 20 biggest grantmaking foundations in Maine. Each year we grant about $1.5 million to Maine nonprofits who provide civil legal aid to Mainers who cannot afford a lawyer. These nonprofits serve more than 19,000 Maine families every year.

We make grants from restricted endowments. We help the legal aid providers run the Campaign for Justice. We are spurring innovation among Maine’s legal aid providers, by funding a new program pursuing systemic solutions to consumer debt and unfair or unscrupulous practices in the consumer finance industry.

One of the small funds at the Foundation is the Thomas P. Downing, Jr. Fund. Tom was my husband. He was stricken with brain cancer and died in 1985. We, his family and friends, established a fund to recognize and reward outstanding legal aid staff, like those whom Tom worked alongside at Pine Tree Legal Assistance in the late 1960s. That was the legacy Tom’s family wanted to leave for the Mainers who don’t get the justice they are promised.

Since 1986, the Foundation has managed Maine’s Interest on Lawyers Trust Accounts (IOLTA) program. By 2008, IOLTA funds had grown to about $1.5 million each year. But during the Great Recession of 2009 the years following, interest rates fell to essentially zero. IOLTA income for legal aid in Maine was cut in half. With recent modest rises in interest rates, IOLTA income has been slowly increasing since then, but it is nowhere near its historic peak.

The Foundation’s leaders realized we had to take action and fundamentally change how we accomplish our mission. “We can’t just slice the pie differently,” one of our Board members said of our funding for legal aid. “We need to make the pie bigger.”

Now is the time to widen the circle of those Mainers who want to fulfill the promise of “justice for all” and support civil legal aid. Together we can realize our vision that every person in Maine gets a fair chance at justice.

• That every victim of abuse asking for protection from the courts faces his or her abuser, not alone, but with a lawyer.
• That every parent in a custody dispute can advocate effectively for their child’s best interest.
• That every immigrant who wants to settle in Maine, starting a life free from persecution, can make their case.
• That every poor person in Maine has a voice in the Legislature, every
day, seeking long-term solutions to injustice.

• That every veteran can get the benefits to which their military service
entitles them.

• That every retired couple can stay in their own home if they so choose.

• That every Mainer with facing eviction, insolvency, abuse, loss of
benefits, or other life-changing circumstances will have someone who
will listen, explain their rights, and help to enforce them.

• That every Mainer has faith she will get fair treatment in our
courts and engage in society with optimism that their contracts will be
enforced and their rights protected.

We hope you will consider investing in this vision with us now.

With broader and deeper support, we can increase our existing
grants for legal aid and add new ones. There are a couple of simple
ways that you can join the Maine Justice Legacy Circle:

• Make a Gift Through Your Will or Trust: A bequest, or
a gift through another estate planning vehicle, allows you
to make a significant gift without impacting your income
now. I’d be remiss in not reminding you of the importance
of creating a will. Studies consistently find that over half of
Americans die intestate—and attorneys are not immune to
procrastinating on this important task!

• Execute a Charitable Gift Annuity with the Foundation:
With a minimum gift of $10,000, you or another person
can receive a lifetime stream of income and significant tax
benefits.

You can learn more about leaving a legacy for justice at the
Foundation’s website, www.justicemaine.org and our “Ways to
Give” pages.

DIANA SCULLY is executive director of the Maine Justice
Foundation. She may be reached at dscully@justicemaine.org or (207) 622-3477.
In 1999, the Town of Greece, in upstate New York, decided to invite local clergy to begin each Town Board meeting with a prayer. In order to find volunteer chaplains, the town used the Chamber of Commerce’s Community Guide, which listed the local houses of worship, all of which happened to be Christian. Considering the pool from which the town was drawing, it was no surprise that all of the volunteer chaplains were Christian. Moreover, some of the prayers utilized overtly Christian themes, including references to “our brother Jesus,” and the “sacrifice of Jesus Christ on the cross.”

In 2008, Susan Galloway and Linda Staples attended a town board meeting, and they were offended by the religiosity. In response to their complaints, the town arranged for prayers from a Jewish layman, as well as the chairman of the local Baha’i temple. When a Wiccan priestess learned of the controversy, she asked for permission to provide a prayer, and the town agreed. Nevertheless, Galloway and Staples sought a federal injunction to limit the prayers to those that were inclusive and respectful of all faiths.

The District Court granted summary judgment in favor of the town. The U.S. Court of Appeals for the Second Circuit reversed and ruled for Galloway and Staples. The Supreme Court reversed and ruled for the town.

Justice Kagan’s dissent asserted the town’s prayers violated the First Amendment. As Justice Kagan put it, the Establishment Clause was meant to ensure that government institutions belong “no less to the Buddhist or Hindu than to the Methodist or Episcopalian.” For rhetorical support, Justice Kagan recalled George Washington’s 1790 visit to Newport, Rhode Island, the site of America’s first Jewish community, where our first President wrote eloquently regarding equality of citizenship, regardless of religion.

The majority, however, was more interested in favorably comparing the town’s prayers to those used to open each session of the United States Congress. Writing for the majority, Justice Kennedy quoted several Congressional prayers, including those from Muslim leader Imam Nayyar Imam (“The final prophet of God, Muhammad, peace be upon him, stated: ‘The leaders of a people are a representation of their deeds’”), Hindu monk Satguru Bodhinatha Veylanswami (“Hindu scripture declares, without equivocation, that the highest of high ideals is to never knowingly harm anyone”), and Rabbi Joshua Gruenberg (“Our God and God of our ancestors, Everlasting Spirit of the Universe…”). Finally, Justice Kennedy offered a Congressional prayer from his Holiness, the Dalai Lama, as quoted above, the text of which, somewhat ironically, reflected exactly the kind of religious inclusiveness that undoubtedly would have satisfied Galloway and Staples.

I am a Buddhist monk – a simple Buddhist monk – so we pray to Buddha and all other Gods.


Evan J. Roth After nearly 20 years in Portland as an assistant U.S. attorney, Evan is now an administrative judge for the Merit Systems Protection Board in Denver. He can be reached at evan.j.roth@icloud.com.
A New York Times best seller, *The Relaxation Response*, was first published in 1975. Authored by Harvard physician, Herbert Benson, it described his research demonstrating that the practice of Transcendental Meditation could lower hypertension. In the intervening four decades numerous other studies have found that meditation promotes a variety of other health benefits as well. In light of the large body of research concerning its clinical benefits, it is somewhat puzzling that more people have not taken up the practice of meditation. Given the significant pressures of the legal profession, it is especially curious that meditation has been slow to be adopted by lawyers and judges. Fortunately, this situation is beginning to change.

The 2016 ABA/Hazelden Betty Ford study of mental health in the legal profession found that we suffer from anxiety and stress at rates much higher than the general population. A meditation practice can help reduce anxiety and stress in both our work and personal lives. Over the past few years, interest in meditation has increased throughout the profession. In 2016, the Maine Assistance Program (MAP) sponsored a four-session course on mindfulness and meditation. We expected a dozen or so participants and were delighted when more than 40 people signed up. For the past several years, the University of Maine School of Law has been holding weekly “Mindful Monday” group meditation sessions for students, faculty, and staff.

Unfortunately, meditation occasionally suffers from the misperception that it is a vestige of the New Age movement. For some it still conjures up images of incense, saffron robes and mantras. While certain schools of meditation may employ these elements, they are by no means essential to the practice. Fortunately, more information has increased public interest, and meditation, no longer an outlier, is becoming mainstream. Meditation essentials could not be more basic. The only necessities are a comfortable place to sit, a relatively quiet space, and one’s undivided attention. The first two requirements are easy. The last is more difficult. Meditation is not so much about perfecting a skill as it is about developing a practice. Practiced regularly, meditation becomes easier over time.

**Monkey Mind**

It is not the goal of meditation to attain a state of mind that is void of conscious thoughts. Such a state is biologically impossible. Our brains are always active, even while we sleep. When at work, our minds are often in overdrive, juggling a multitude of thoughts and ideas, each one vying for our attention. In such situations, it is frequently difficult to focus exclusively on the present moment. Our minds bounce back and forth between thoughts of the past to concerns about the future. In meditation parlance this state is often referred to, quite aptly, as the “monkey mind.” It is as if our thoughts have turned into a hoard of chattering monkeys. Concentration is difficult at best, and next to impossible at worst. Sometimes our monkeys are hypercritical, anxious or panicked. At other times our monkeys like to reminisce or excitedly anticipate the future. They can be very distracting, and sometimes downright harmful. Meditation enables us to quiet the monkeys and permits our minds to focus on the present.

Many attorneys complain that they find meditation especially difficult. Client needs and cases often occupy their thoughts even when they are not at work. This frequently raises stress levels. Skill in analyzing legal problems, foreseeing consequences, devising solutions, and advocating for clients in adversarial settings are all essential qualities in a successful lawyer. However, they are not particularly conducive to developing a quiet mind.

**Beginning Meditation**

It is important to keep in mind that meditating is simple, but not necessarily easy. It is essential to find a method that works for you. There are many meditation techniques from which to choose. An excellent book for anyone interested in learning more is *Meditation for Beginners* by Jack Kornfield. The author approaches meditation from a Buddhist background. For those who prefer a more secular perspective, the bestseller *10% Happier* by ABC News executive Dan Harris is both informative and entertaining. The book’s secondary title is *How I Tamed the Voices in My Head, Reduced Stress without Losing My Edge, and Found Self-Help that Actually Works*. It chronicles the author’s search for
a method to quiet the monkey mind that caused him to have a full-blown panic attack on live television. In the alternative, you can access a wide variety of articles on the subject simply by typing “meditation techniques” into any search engine.

Meditating in silence can be a struggle, especially at first. (Those monkeys can be unrelenting). Many people find guided meditations, where one listens to soft music or a quiet voice while meditating, to be an effective alternative. There are numerous online apps for guided meditations. Insight Timer is a very versatile app that allows users to filter dozens of free meditations by duration, theme, music, voice or sound. Starting off with daily five-minute guided meditations is a good way to develop a meditation practice. Sessions can be lengthened over time as the practice becomes easier. Keep in mind that it is not a competition. Unlike gym workouts, where more reps with heavier weights may be the goal, meditation doesn't require ever-longer sessions. Twenty to 30 minutes a day is sufficient to experience benefits. Meditation is similar to physical exercise in that its rewards are commensurate with the frequency of implementation. On busy days, a five-minute session will suffice. The objective should be to meditate every day.

Give meditation a try. A modest effort can yield significant returns. If you are interested in discussing the subject, contact MAP, the Maine Assistance Program for Lawyers & Judges, at maineasstprog1@myfairpoint.net.

WILLIAM C. NUGENT, ESQ., is director of the Maine Assistance Program for Lawyers & Judges. Bill can be reached at maineasstprog1@myfairpoint.net.

4 D. Harris. 10% Happier – How I Tamed the Voice in My Head, Reduced Stress without Losing My Edge, and Found Self-Help that Actually Works – a True Story, Dey St. (2014).
Secure your future with confidence.

Information. Education. Advice. Advocacy.

With a broad range of services, our locally-based Wealth Management team can provide professional guidance you can trust and the security you deserve.
Today, my mother, Marjorie Miller Wanderer, would have turned 100. She was such a force in the world; we never doubted that she would make it to 100. Sadly, however, we lost her six years ago at age 94. In addition to being a wonderful mom and Girl Scout leader, my mother was the best English teacher and grammarian I have ever known. Today, on what would have been her 100th birthday, I dedicate this column to her. Just as she was a superpower in the world, the verb is the superpower of the sentence.

The Eight Parts of Speech

When I was a child, my mother taught me the eight parts of speech—noun, pronoun, adjective, verb, adverb, preposition, conjunction, and interjection—and expected me to recognize them in sentences. Eventually, she showed me how to diagram sentences, ensuring that I would never mistake an adjective for an adverb, or a preposition for a conjunction. I was grateful for those lessons, which have stood me in good stead grammatically for a lifetime.

Although all the parts of speech are important, and some words can function as more than one part of speech, depending on how they are used in a sentence, I came to understand that the verb was the most important part of speech. Without it, complete sentences are not possible. With it, complex concepts can be conveyed, including tense, mood, and voice. As lawyers, we need to choose our verbs carefully, not only to be able to write and speak grammatically, but also to unleash the verb’s tremendous power to tell a compelling story or make a persuasive argument.

Verbs: The Ultimate Multitaskers

The primary job of the verb is to express action (run, jump, laugh) or being (is, become, will be). It is composed of a main verb, possibly preceded by one or more helping verbs. Sometimes other words intervene between the helping verb and the main verb (did not eat). In addition to expressing action or a state of being, verbs indicate tense (past, present, and future), voice (active and passive), and mood (indicative, imperative, and subjunctive).

Examples of Main Verbs and Helping Verbs:
The Defendant killed the police officer. (main verb=killed) He was not prepared for the attack. (main verb=prepared; helping verb=was; intervening word=not)

Tense

Tense indicates the time an action occurs in relation to the time of the speaking or writing about that action.1 Simple tenses—past, present, and future—indicate simple time relations. The present tense is used to describe actions occurring at the time of the speaking or writing or actions occurring regularly. The past tense is used for actions that were completed in the past. The future tense is used for actions that will occur in the future.

Helping verbs include forms of the words have, do, and be, which may also function as main verbs. When combined with participles, these words are also able to indicate tense.

Present Tense: Usually the judge begins the proceedings by banging the gavel.

Present Participle: She is beginning the proceedings by banging the gavel.

Past Tense: She began the proceedings by nodding to the attorneys.

Past Participle: She has begun the proceedings that way in the past.

Future Tense: She will begin the proceedings in any way she wishes.

Future Participle: She will have begun the proceedings that way many times.

Past participles are used in the following three ways: (1) following have, has, or had to form one of the perfect tenses; (2) following be, am, is, are, was, were, being, or been to form the passive voice; and (3) as adjectives, modifying nouns or pronouns.2

Examples Showing the Uses of Past Participles:
(1) My client has asked me to seek a settlement. “Has asked” is a present perfect tense (have or has followed by a past participle).
(2) Since the #MeToo movement began, sexual harassment is discussed more openly than in the past.
"Is discussed" is in the passive voice (a form of be followed by a past participle to form the passive voice).

(3) It took great skill to prepare the frightened witness for trial. The past participle "frightened" functions as an adjective modifying the noun "witness."

Perfect tenses, which consist of a form of the helping verb "have" plus a past participle, are used to express more complex time relations, such as an action that was or will be completed at the time of another action.

Examples:

Present Perfect
She has worked in the AG’s office for twenty years.

Past Perfect
She had worked in the AG’s office for twenty years before retiring.

Future Perfect
She will have worked in the AG’s office for twenty years by the time she retires.

Simple and perfect tenses also have progressive forms that describe actions in progress. A progressive verb consists of a form of the verb "to be" followed by a participle.3

Present Progressive
He is trying the case in federal court.

Past Progressive
He was trying the case in federal court.

Future Progressive
He will be trying that case in federal court.

Present Perfect Progressive
He has been trying the case in federal court for three years.

Past Perfect Progressive
He had been trying the case in federal court for three years before the parties finally decided to settle.

Future Perfect Progressive
He will have been trying that case in federal court for a very long time.

If your eyes are glazing over at this point, let me assure you that it is not important to be able to identify or name any of these verb forms. If you never say or hear the words “past participle” or “future perfect progressive” again, it will not matter at all. The important thing to remember is that the number of possible tenses is finite and that using helping verbs and past participles to convey different levels of the past, present, and future will enhance your ability to tell a story and explain the procedural posture of a case.

Maintaining Consistent Verb Tenses

Using consistent verb tenses is essential to establish the time of the actions being described. When a passage begins in one tense and then shifts to another for no good reason, readers become distracted and confused.

Example of a Confusing Shift in Verb Tense:
The young man was walking along, minding his own business when, all of a sudden, the defendant ran up and stabbed him.

In this sentence, the young man was walking along, minding his own business, in the past and the defendant runs up and stabs him in the present. Chronologically, that makes no sense. Both actions took place in the past and both verbs should be in the past tense.

Rewritten with Consistent Verb Tense:
The young man was walking along, minding his own business when, all of a sudden, the defendant ran up and stabbed him.

Because the verb "was walking" is in the simple past tense, the verbs "ran" and "stabbed" must also be in the past tense.

Actions occurring at the same time cannot occur in the past and the present at the same time.

In a legal brief or judicial opinion, facts should always be described in the past tense because those actions took place in the past. Legal principles that will determine the outcome of the case, however, should be described in the present tense. More complex tenses may be needed when discussing trial procedure or testimony regarding actions that took place at different times in the past.

Examples:
The defendant testified that he had not stabbed the young man.

The verb "testified" is in the simple past tense because the action took place completely in the past. The verb “had not stabbed,” however, is in the past perfect tense because it took place at a time previous to the time the defendant testified about his actions.

The jury is deciding whether the defendant was lying when he testified that he had not stabbed the young man.
The verb “is deciding” is in the present progressive tense. This action is taking place at the time of the writing and consists of a form of the verb “to be,” followed by the present participle “deciding.”

Going from one level of the past to the previous level may sometimes seem like putting together or taking apart a Russian Matryoshka doll, with the tenses nesting in one another as the facts of a case goes back in history and the case itself progresses through the legal system. Although it is sometimes challenging to make sure all the tenses used in describing the facts, procedural posture, and law that applies to the case are correct, it is worth the effort. As difficult as it is to get all the tenses straight, it is even more difficult for a reader to follow the story and understand the procedural posture of a case if the tenses are not presented meticulously.

For example, in an appeal to the Maine Law Court of a decision by an administrative agency, an attorney will need to convey the following: (1) what happened in the first place to prompt the agency’s ruling, (2) the agency’s ruling as well as the ruling of an intermediate board of appeal, (3) the facts found by the agency and the board of appeal, (4) the rationale for all rulings, (5) arguments regarding what the agency and board of appeal may have concluded or presumed about the facts or law in the case, and (6) arguments to the Law Court about the facts and how to apply applicable law. To convey what has happened prior to the appeal will require the attorney to establish by her use of verb tense, the order in which events occurred in the past and what the Law Court should do in the present, which will, of course, have implications for the future. Understanding how and when to use the simple or more complex forms of verb tense will aid immeasurably in conveying this complicated story and making an effective argument to the Court.

**Mood**

Three moods exist in the English language: “the indicative, used for facts, opinions, and questions; the imperative, used for orders or advice; and the subjunctive, used for wishes or conditions contrary to fact.” Most people have no difficulty recognizing and using the indicative and imperative moods. The subjunctive, mood, however, may present more of a challenge.

In the subjunctive mood, present-tense verbs do not change form to indicate the number and person of the subject. Instead, the subjunctive uses the base form of the verb (be, eat, or run). The subjunctive mood appears in the following contexts: in contrary-to-fact clauses beginning with “if” or expressing a wish (“If I were you”) and in “that” clauses following verbs like “ask,” “insist,” recommend,” “request,” and “suggest” (“He recommended that she go to college”).

**Examples of Subjunctive Mood:**

If I were [not if I was] you, I would move to Maine, not Arkansas. She asked that he eat [not he eats] more quickly.

Unnecessary shifts in mood can be as confusing as shifts in tense. They should be avoided.

**Example of a Confusing Shift from the Indicative to the Imperative Mood:**

The police officer warned us against giving people without proper identification access to our homes. Also, let neighbors know when you are going on vacation.

In these two sentences, the mood shifts from indicative (providing facts about what happened) to imperative (giving an order or advice).

**Corrected Sentence:**

The police officer warned us against giving people without proper identification access to our homes and suggested we let neighbors know when we are going on vacation.

In the corrected version, the indicative mood is consistent.

**Effective Use of Active and Passive Voice**

The voice of a verb may be either active (with the subject doing the action) or passive (with the subject receiving the action). The passive voice is appropriate when the emphasis is on the recipient of the action, not the actor, or when the actor is unknown or unimportant.

**Examples:**

The jury convicted the con man of fraud. (active voice: focus is on what the jury decided)

The con man was convicted of fraud by the jury. (passive voice: focus is on what happened to the con man)

The bank has been robbed three times in the past year. (passive voice: actor is unknown or unimportant)

Although it is usually better to use the active voice, sometimes the passive voice is more effective, especially if the writer wants to de-emphasize the subject of the sentence. If, for example, your client is being tried for robbing a bank, you might want to use the passive voice to describe the incident.

**Examples:**

Defendant asked the teller to give him all the money in the vault. (active voice: clearly showing involvement of the defendant, your client)

The teller was asked to hand over all the money in the vault. (passive voice: eliminating any reference to the defendant, your client)
Using the passive voice may introduce ambiguity into a sentence by omitting the subject, or actor.

Example:
The point was made that we should give peace a chance. (passive voice: no subject)
John Lennon urged us to give peace a chance. (active voice: “John Lennon” is the subject)

Implications for Lawyers
Some of you may be wondering why I have chosen an esoteric discussion of verbs to honor my mother on what would have been her 100th birthday. The answer is simple. My mother believed that the correct use of grammar, especially verbs, was the pathway to clear, powerful communication. She applauded my decision to teach legal writing at the University of Maine School of Law and hoped I would be able to make a significant contribution to society by helping law students, and even lawyers and judges, write better memos, briefs, and opinions. Using verbs correctly to write better sentences is the way she believed I could achieve that goal. I hope this column, with its emphasis on using verb tense, voice, and mood effectively, is a fitting memorial to my mom, the quintessential English teacher. May her legacy endure forever.

2 Id. at 180.
3 Id. at 182.
4 Id. at 111.
5 Id. at 186.
6 Sometimes people confuse the concept of “passive voice” with “past tense.” Although the words “passive” and “past” are similar, the two have nothing to do with one another. Passive and active voice refer to whether the subject is acting or being acted upon. Past tense refers to a time in the past when the action occurred.
I don’t like PowerPoint. And I’m not alone. Amazon CEO Jeff Bezos banned PowerPoint from company meetings, because (he wrote in an email) “Powerpoint-style presentations . . . give permission to gloss over ideas, flatten out any sense of relative importance, and ignore the interconnectedness of ideas.” For Bezos, a 4-page memo is better than a 20-page PowerPoint presentation, because “the narrative structure of a good memo forces better thought and better understanding of what’s more important than what, and how things are related.” By the same logic, the narrative structure of a good talk by a capable speaker—one with a story to tell or an idea to explain, rather than just a list of items to check off—should have the same advantages.

Or would you prefer, if I were speaking the words written above, that you also have the opportunity to stare at something like this:

Why PowerPoint is Bad

- Banned at Amazon
- Glosses over ideas
- Ignores connections/relative importance
- Memo or talk better
- Narrative structure
- Better thought/understanding

Is that helpful?

Looking at bullet-pointed text while someone is speaking distracts me; the text on the screen competes with the speaker’s voice for my attention. Sometimes I skip ahead in the PowerPoint and stop listening to what the speaker is saying. Or I puzzle over subtle and probably insignificant differences between the words coming out of the speaker’s mouth and the ones on the screen. Then I wonder when the next slide is going to appear. Perhaps I lack mental discipline, but that’s how I experience the typical PowerPoint-accompanied talk.

PowerPoint also distracts the speaker. Instead of settling into a narrative groove and telling their story, speakers who use PowerPoint often pause to check in with their slide, or to comment on it (“so, the second bullet . . .”). Sometimes the speaker is momentarily confused and pauses for a beat or two to realign the spoken and written word. If the presentation includes audience participation and does not require rigid adherence to a preset agenda, the natural flow of the discussion may be in one direction while the speaker struggles to get back to the topic the screen prefers.

PowerPoint favors superficial comprehensiveness over storytelling and analytical depth. When we make bullet-pointed lists we aim to be exhaustive, to acknowledge everything but go deep on nothing. Information-design guru Edward Tufte has said that “the PowerPoint style routinely disrupts, dominates, and trivializes content.” While limited use of PowerPoint as a side projector would be unobjectionable, “rather than supplementing a presentation, it has become a substitute for it.” Instead of telling stories and exploring ideas, PowerPoint encourages us to settle for reciting facts and identifying issues.

This is fine if the point of your presentation is to recite facts and identify issues. But the people we think of as good speakers are the ones who can turn any topic into something engaging. A good way to do this is to resist the pull of
PowerPoint toward reducing communication to a process of making a list and telling everyone about the list you made. For Tufte, “PowerPoint presentations too often resemble a school play—very loud, very slow, and very simple.” Better to tell the audience a story or interest them in an idea, and just let people listen to you as you speak.

PowerPoint does have its uses. It’s good for showing pictures, if the pictures are important to understanding what you’re talking about (but don’t show pictures just because they’re nice to look at—that’s a distraction). Or for displaying a high-level roadmap of the major points of your talk. Or other things that, like pictures, are easier to understand if you’re looking at them (for instance, to demonstrate how a sentence should be punctuated, it helps to see the sentence). If I were giving this column as a talk and had to use PowerPoint, I might prepare an exaggeratedly over-busy slide to illustrate the point about being distracted—but I would not prepare a high-level roadmap of major points, because the talk would be too straightforward to need one.

### PowerPoint Dos and Don’ts

**Do**

- Use for pictures (if important)
- High-level roadmap (maybe)
- Other stuff that’s actually helpful to look at

**Don’t**

- Just about anything else you are tempted to do with PowerPoint.

Does that make things clearer?

**JONATHAN MERMIN** is Of Counsel at Preti Flaherty. He can be reached at jmermin@preti.com.

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3 *Id.*
4 *Id.*
### MSBA CLE Calendar

**LIVE PROGRAMS**

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Please visit [www.mainebar.org](http://www.mainebar.org) for the most current CLE schedule.

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**SAVE THE DATE:**

**Annual Bar Conference**

- **Jan 30-31, 2020**
- **Westin Harborview, Portland**

**Summer Bar Conference**

- **June 24-26, 2020**
- **Harborside Hotel, Spa & Marina**
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