

 PRIMERUS™

LADY JUSTICE

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PRIMERUS WOMEN
LAWYERS SECTION

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WOMEN LAWYERS SECTION UPDATES

WLS Networking Calls

- May 13, 2024 at 10:00 am EDT - joint call with Quality of Life subcommittee of the Quality Assurance Board
- May 29, 2024 at 11:00 am EDT - joint call with Labor & Employment Practice Group
- September 10, 2024 at 1:30 pm EDT
- November 12, 2024 at 1:30 pm EST

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CHAIR COLUMN



Melissa Demorest LeDuc focuses her practice on commercial real estate and business transactions. Her commercial real estate practice includes sales and acquisitions of multifamily housing, hotels, shopping centers, and other commercial properties, as well as leasing. She also handles business mergers and acquisitions, contracts, and other business transactions. She serves as outside general counsel for many small businesses, providing guidance in employment, real estate, contracts, business formation, and other business matters.

Welcome. I am the new Chair of the Women Lawyers Section (WLS). I would like to thank our Immediate Past Chair, Karina Sterman of Greenberg Glusker, and our WLS executive committee (Jessica Klotz of Lewis Johs Avallone Aviles, LLP, Carrie Ward of Earp Cohn P.C., and Melody Block of Mandelbaum Barrett PC) for their fabulous leadership and contributions.

Our goal in this issue is to showcase the wide variety of expertise that Primerus women lawyers have developed. We have an international group of experts (who happen to be women) in so many areas of the law. Our goal as the WLS is to support

women lawyers, both in Primerus and in their firms and careers.

We would also love to grow our reach throughout the international Primerus community. We hosted an “IPC meets WLS” call on March 12 to continue forming and growing relationships between women lawyers in the United States and in Asia. It was a great discussion about how, despite cultural differences, women lawyers around the world face many of the same challenges, including work/life balance (particularly as mothers), setting boundaries with clients, and making our way in a profession that is still mostly dominated by men.

We host quarterly networking calls, including book conversations (coming again in November 2024 after great success in November 2023), guest speakers, and discussions on hot legal topics. The best part of these calls is the great community that we are building.

We have also started hosting networking events at the Primerus Global Conference, including last fall in Versailles, France, and will do so again this fall in Asheville, N.C., USA. I would love to see you there. It was wonderful to connect with old friends and meet new ones in Versailles, and I look forward to the same in Asheville.



CHARITY LAW



Lisanne Meijerhof advises international and national entrepreneurs and family businesses.

Lisanne is a member of the corporate litigation group at Russell Advocaten. At Russell Advocaten, Lisanne combines her passion and expertise by regularly providing specialist advice for charitable organizations with a broad range of aims. She specializes in charity law, directors' liability, and art and law. The clients she serves include important business leaders and notable members of the art world.

Ever since I was a kid, I have loved going to museums. I would wander endlessly through large rooms filled with old paintings, white statues, and broken vases. When doing so, I would occasionally notice the small plaques that would sometimes be placed near a certain painting: acquired with the help of foundation so-and-so. Or, upon entering a certain room: the so-and-so wing, connoting that the artworks in the room had either been donated by or been acquired through the donations of the said individual, family, or corporation. Although I did not realize it at the time, these were the first instances where I came into contact with philanthropy; the act of giving, in the form of money, goods, time, or any other thing, with the intention of furthering society.

As I grew older, I started to become more and more aware of, and fascinated by, just how big of a role philanthropy plays in our society. The examples are almost endless; from the foodbanks, which collect money and use this money to buy and distribute food to those who cannot afford to buy it, to the various cancer charities collecting money for cancer research, to the countless mental health charities striving to raise awareness and offer accessible mental health care, to the less visible but not less important foundations focused on providing aid in the form

of education, healthcare, and the like to underprivileged or immigrant children. The philanthropic landscape is not only incredibly big but also immensely diverse.

Quite some years later, and as a lawyer now working in the field of charity law, this diversity has become one of my favorite aspects of the sector. I specialized even further in this field by completing the post-graduate training program "Governing Charitable Funds" which was co-founded by Reinier Russell. No two of my clients are alike, and each time, the questions that I am asked are slightly different from the last time. There are, however, some common themes and topics that I have noticed over time.

One common topic concerns the duties and responsibilities of the board of philanthropic organizations and the rules that should be followed by board members. Something that (almost) all of the board members of philanthropic organizations that I have met throughout the years have had in common, is an incredible amount of optimism and heart for the cause – whatever the cause may be. However, they are often not 'professionals', but volunteers, who hold the board membership in addition to their regular jobs. As such, while I would say that the

intentions of board members are almost always good, an in-depth knowledge of the workings and responsibilities of a board and more importantly their duties as board members are required, as well as the rules they have to adhere to. For instance, I once spoke to a board member of a Catholic foundation that would organize, among other things, yearly bake sales in churches. They would buy cakes and pies from nearby bakeries and sell them for a small profit. Every year, it became more challenging to find a bakery to deliver baked goods at a price that was low enough to allow them to still make a profit. When I spoke to this board member, the annual bake sale for that year was fast approaching, and she told me that, although they had eventually found a bakery, that bakery had wound up dropping out at the last moment. With time rapidly running out, she had found what seemed like the ideal solution; her sister, a part-time caterer, had offered to make and deliver the cakes and pies that the foundation needed. She was even willing to do so at a price that was significantly lower than that of the bakeries the foundation had worked with in the past. The board member proposed this to the rest of the board, and a majority of the board members ended up voting in favor of the plan to ask her sister to make and deliver the baked goods. The

bake sale made a bigger profit than ever before this year. So far, so good. Or at least, so everyone thought. Because, as the board member that I spoke to would come to find out, when problems arose within the board, and specifically with one board member, and even though she had been unaware of it at the time, her involvement in the board decision to ask her sister to make and deliver the baked goods at a small price, had made the entire board decision voidable and herself potentially liable. She ought to have refrained from voting on the decision due to the involvement of her sister, which constituted a conflicting interest.

Of course, the above example also touches upon another common topic, namely that of the potential liability of the board members. In the Netherlands, we have the doctrine of directors' liability, meaning that the board and its members may in certain circumstances be held liable for certain board decisions and actions, if they can be considered to have acted wrongfully. Board members can be held liable both by external parties and by their own board, both during and after their tenure as board member. The bar for this is quite high. However, if this bar is met, the consequences tend to be disastrous; the board member is then personally liable for the consequences of those decisions and actions.

Take, for instance, the example about the bake sale. In this case, as far as I know, the bake sale ended up being a success and a big profit was made. In other words, no damage was done and on this ground alone it would be hard to see how the board member who had voted to ask her sister to bake and deliver baked goods could be held liable for this. However, suppose that after the bake sale, many visitors had fallen ill, and it

had turned out that the sister of the board member was actually a very bad baker, and as a result, had gotten many people sick. And suppose that those sick people had ended up suing the Catholic foundation, which, by that time, had gotten an entirely new board whose members were not keen on paying those people. Arguably, those new board members could then attempt to, in turn, sue the former board member, the sister of the caterer, because she could be considered to have brought them in this position. If successful, this former board member would likely have to pay a significant amount to the Catholic foundation. Especially considering that this board member, like almost all board members of philanthropic foundations, is not a professional, this seems like a

far-reaching consequence. This is something that board members of philanthropic foundations are often not aware of.

As a lawyer, I thoroughly enjoy helping board members of philanthropic organizations when these and other questions come up. Nowadays a lot of my work is also related to internationalization or even globalization of charities. Being well-established in their home market also makes charities spread their wings in other countries. How can they control their international operations? My main aim in this is always the same: to ensure that the good intentions that all of these philanthropic foundations and their board members have, are also well executed. **P**



10 STRATEGIES FOR GUIDING YOUR CLIENTS THROUGH A SUCCESSFUL CONSTRUCTION PROJECT



Jacqueline Greenberg Vogt, chair of Mandelbaum Barrett PC's Construction Law Group, assists owners, developers, investors, lenders and contractors throughout the entire construction lifecycle, from initial conception and project planning to contract negotiations, bid preparation and project delivery. Jacky also has significant experience resolving a wide array of disputes, including payment disputes, lien claims, defective design and construction claims, delay claims, indemnity claims, personal injury claims, labor and employment issues, and default and convenience terminations. In addition, she frequently litigates claims against surety bonds and construction insurance policies, and addresses creditors' rights and bankruptcy issues. She has tried cases in state courts, administrative tribunals and arbitration panels.

There has been a recent abundance of catastrophic construction failures which undoubtedly have caused concern for you and your clients embarking on large projects. One of the more recent failures occurred, on March 15, 2018, when a pedestrian bridge collapsed at Florida International University killing six people. On Oct. 22, 2019, the National Transportation Safety Board issued a report blaming design errors and poor oversight for the tragedy. Two other deadly accidents occurred in the past year involving construction cranes. These examples highlight a broader concern in today's landscape of complex construction.

Indeed, anyone beginning a construction project of any size or value has reason to be wary of the potential for delays, overruns,

conflicts, defects, and failures.

According to a McKinsey & Co. Inc. survey, large projects across asset classes typically take 20% longer to finish than scheduled and are up to 80% over budget.

Experienced construction lawyers can guide their clients through successful construction projects by a variety of techniques, but the overriding theme requires effective preplanning, oversight, cooperation, and anticipating problems and managing them before they become delays, failures, and catastrophes. Below are 10 suggestions so that you may assist your clients in planning and managing construction projects in order to bring them in on time, on budget and well-constructed.

1. CAREFUL CONTRACTING

Aside from the construction work itself, the contract is the most important part of the project. In the case of a well-written contract, the written terms carefully and clearly define the parties' agreement, their expectations, and their respective risks and obligations.

Owner-drafted contracts frequently seek to protect the owner from all possible claims. Such contracts contain exculpatory language, waivers, and limitations intended to bar virtually all claims by the contractor. The idea is to protect the owner from all foreseeable and unforeseeable risks by shifting responsibility for those risks to someone else. One-sided contracts, however, may generate as many claims as they prevent.

Construction disputes are best avoided through a fair allocation of project risks. The guiding principles are that risks should be allocated first to the party who has direct control over the portion of the construction that creates the risk, and when no party has direct control, to the party who is best able to protect against an unexpected loss. When no party has any control, risk is allocated to the owner, who is the party that initiated the construction project and is the ultimate beneficiary of the results.

2. INDEPENDENT COST ESTIMATES

Another way to ensure a successful project is to limit budget overruns by obtaining independent cost estimates as the design progresses. This involves checking and double checking the cost estimate for the work with contractors and suppliers who actually perform the type of work or supply the type of product being specified, as opposed to leaving this task to the design team.

An owner can use an outside consultant to provide objective information from trades or use its own personnel to obtain the estimates. Although this service involves an extra expense, the expense is modest and well worth the cost.

3. ESTABLISH A FIRM BUDGET

While every project has a budget, some budgets are firmer than others. To reduce the risk of overruns, an owner should establish a firm budget and direct the architect and engineers to design to that budget. The owner should clearly establish the budget from the start and hold the designer to that budget. Also, the contracts with the designers can be written to require them to revise the plans at no cost if the bids exceed the budget by a stated percentage. Note that such



a provision is difficult to negotiate with the designers but can provide an important safeguard for the owners.

4. USE “ADD AND DELETE” ALTERNATIVES

Under this approach, the design team preplans certain components of the work which the owner may delete if the bids come in too high and add if the bids are lower than expected. Making sketches of alternative design concepts helps communicate and fix the project scope of work, aids in determining project feasibility, and provides more input for developing realistic estimates, budgets, and schedules.

Cost estimates are prepared for each alternative to ensure selection of the best systems and components. Preplanned “add and delete” alternatives protect the owner from the delays, disruptions, and extra expense caused by redesigning the project after bids are received and shifts the consideration of alternatives to the design phase when the opportunity to control costs is the greatest.

5. PEER REVIEW THE DESIGN

An incomplete, inaccurate, or poorly coordinated design inevitably will produce a project with conflicts, unanticipated costs, delays, and claims. Conversely, nothing diminishes the risk of conflict, and provides protection for the owner, more than an accurate and complete design. Peer review involves an independent architect or engineer reviewing the plans in an effort to uncover errors, omissions, and inconsistencies. The modest cost is justified by avoiding the delays, disruptions, and extra costs which usually are involved when design errors are discovered in the field after construction is underway.

6. REVIEW THE PLANS FOR CONSTRUCTABILITY

Constructability describes the ease and efficiency with which structures can be built. The constructability of a building depends largely on the quality of the designs – if the design documents contain errors or are difficult to interpret, the project will be more difficult to

build. A constructability review is used to identify obstacles before construction.

Having a qualified contractor or project manager evaluate the plans for constructability before construction begins helps assure that the plans can be efficiently implemented in the field. Again, although this service involves an extra expense, it is a modest expense which is well worth the cost.

7. SET A REASONABLE SCHEDULE FOR CONSTRUCTION

The timeline for a construction project should be driven by the scope and needs of the project. Never start a project under undue time pressure or inevitably the project will suffer the consequences. In the event that too much time pressure is placed on the contractor, the contractor is motivated to cut corners. Cutting corners leads to poor workmanship, and poor workmanship leads to construction defects. For example, if the weather is truly worse than anticipated, or lead times on materials are affected by market conditions, it is best to

willingly provide a contractor with adequate time to do the job correctly, even if doing so requires a reasonable time extension.

Also, when commencing construction, contractors justifiably expect that all necessary permits are in place, they will have access to the work, they will receive timely engineering and owner-supplied information, shop drawings will be promptly reviewed, and unexpected conditions or changes will be fairly compensated. Where these expectations are not met, delays inevitably occur. To assure success, all project participants should have reasonable expectations, and know that some element of delay must be tolerated.

8. SUBMITTALS AS COMMUNICATION BETWEEN CONTRACTOR, DESIGNER AND OWNER

A shop drawing is a drawing or set of drawings done before construction that contains all the details needed to guide the construction of the project. They take the designer’s plans and depict exactly where everything will be located. In addition, they act as a step-by-step manual of the construction process and act as a bridge between the contract documents and the contractor.

The shop drawing process seeks to avoid misunderstandings by allowing the contractor to demonstrate the detailed application of the architect’s or engineer’s design. The contractor reviews the shop drawings to coordinate the trades and verify that the project can be built. The designer reviews the shop drawings to ensure that the proposed construction scheme meets the design intent for the completed structure and the

owner’s expectations. The contractor, designer, and owners here share a common goal.

The process of shop drawing submittal and review is intended to be a dialogue between the designer and contractor. It is here through effective communication that the owner, contractor, and designer have the best opportunity to avoid claims due to nonconforming or defective work.

9. REVIEW CONSTRUCTION ACTIVITIES

The prudent owner will keep a close eye on the progress of construction. Owners commonly leave construction oversight to the construction manager and often have no knowledge of conflicts which are brewing in the field. Some of those conflicts eventually become claims. Many owners find that, by the time they become aware of a claim, the dispute is far more serious (and therefore more disruptive and costly to remedy) than it would have been had the issue been detected and properly managed earlier in the construction process.

Unfortunately, some owners, even on large projects, attempt to avoid the cost of additional review. By regularly reviewing construction activities, however, an owner improves the chances of uncovering conflicts, reducing unexpected change orders, detecting potential design errors, revealing poor construction practices, and avoiding claims.

One way the owner can review construction activities is by periodically reviewing project meeting minutes. Doing so improves the chances of detecting issues and

conflicts before they ripen into claims. Although the construction manager is primarily responsible to oversee construction activities, occasional independent review by the owner improves the chances of recognizing conflicts early, particularly where the construction manager’s own error may have caused or contributed to a problem.

10. PERIODIC AUDITS OF CONTRACTOR BILLING

Construction audits provide a useful and important monitoring capacity. By using this mechanism, an owner can assess whether the project is on time, behind schedule, or ahead of schedule. Periodic project audits are intended to (1) detect fraud, including contractor overbilling, inappropriate cost-shifting, abusive change order practices, and other abnormalities; (2) ensure controls are in place; (3) verify contractor compliance with government requirements (e.g., prevailing wage, disadvantaged business enterprise); and (4) avoid litigation.

By regular periodic auditing, projects can be kept on track, or if off track, be used to get the project back on track. Again, the modest cost associated with the audits is money well spent.

CONCLUSION

The failure to incorporate these suggestions not only has a financial impact but can lead to catastrophe. Advising your clients to incorporate the preconstruction and construction phase planning and review concepts discussed here is the first step in avoiding terrible consequences. **P**



THE POWER OF OWNERSHIP

LEARNING FROM TAYLOR SWIFT'S COPYRIGHT JOURNEY



Carrie Ward is an entertainment and intellectual property shareholder at Earp Cohn, P.C. with a passion for advocacy, creativity, and empowerment. Her clientele spans across media group owners, broadcasters, podcasters, actors, filmmakers, musicians, and startup entrepreneurs. With a focus on protecting trademarks and copyrights, Carrie assists clients in day-to-day operations, from contract drafting to regulatory compliance in advertising content. She is also an Adjunct Professor at Saint Joseph's University teaching a class on Music and Entertainment Law and the Business of Recorded Music.

The music industry, a fusion of artistic creativity and commercial enterprise, is governed by a complex set of copyright laws. Understanding these laws is essential for artists, songwriters, and industry professionals to protect their work and navigate the intricacies of music rights. Taylor Swift's journey in the music industry exemplifies the critical importance of copyright and

ownership rights for musicians. Her legal battles and strategic decisions provide valuable lessons for artists in managing their intellectual property. This article showcases these lessons, offering insights into the complexities of music copyrights and the significance of ownership, particularly in the context of Swift's career.

BACKGROUND OF COPYRIGHT IN THE MUSIC INDUSTRY

Copyright law is the foundation of the music industry, offering legal protection for musicians' creative works. In the United States, copyright protection requires fixation in a tangible medium, granting musicians rights to their musical compositions (lyrics and melodies) and sound recordings. These rights allow control over the reproduction, distribution, and public performance of the work. Owning these components is vital for artists, as it grants them control over their creative output.

In collaborative music creations, copyright is inherently held by all contributors. The law assumes an equal share for each author unless an alternative arrangement is agreed upon. This shared ownership not only acknowledges the collaborative nature of music creation but also ensures that each contributor's rights are adequately protected, including Taylor Swift's.

OWNERSHIP VERSUS CONTROL IN COPYRIGHT

It is crucial to distinguish between ownership and control of copyright. While each author of a song holds an ownership right due to their contribution, this does not equate to complete control over the work. Particularly in collaborative works, understanding and negotiating these terms are essential for artists to maintain their rights and intentions for the song.

TAYLOR SWIFT'S EARLY CAREER AND COPYRIGHT CHALLENGES

Taylor Swift's experience with Big Machine Records highlights the complexities of music industry contracts. When Swift signed with Big Machine in 2005, she transferred the ownership rights of her song recordings to the label but retained the copyrights to the lyrics and melodies. This contractual arrangement was typical in the industry, but it posed significant challenges, particularly concerning the control and use of her music. When Big Machine was acquired by Scooter Braun's Ithaca Holdings in 2019, Swift lost control over the master recordings of her first six studio albums, even though she retained the publishing rights due to her role as the main songwriter.

THE VALUE OF MASTER RECORDING OWNERSHIP

The owner of a master recording – the original sound recording of a song – has exclusive rights to copy, distribute, and license the recording. In the music industry, artists often assign the rights to their master recordings to record labels in exchange for a royalty, typically a small percentage of the revenue. While this can lead to wider distribution, it often means the artist loses control over how the master recording is used.

Owning master recordings can be a significant financial advantage for artists. It allows them to earn income from album sales and streaming, both physically and digitally. Additionally, master recordings can be licensed for use in movies, television shows, commercials, and other forms of media. Syndication and broadcast rights, such as when songs are played on the radio or in public venues, add to the revenue derived from these recordings.

THE STRATEGY OF RE-RECORDING AND REGAINING CONTROL

Swift's response to the Scooter Braun situation was innovative and unprecedented in the music industry. She chose to re-record her earlier albums, starting with "Fearless (Taylor's Version)" in 2021. This move was possible because her original contract included a clause that limited re-recording for a fixed period, which had expired. By re-recording her music, Swift created new copyright works in the performances and recordings, allowing her to regain control over her songs without resorting to litigation or lengthy negotiations.

IMPACT ON THE MUSIC INDUSTRY AND FUTURE IMPLICATIONS

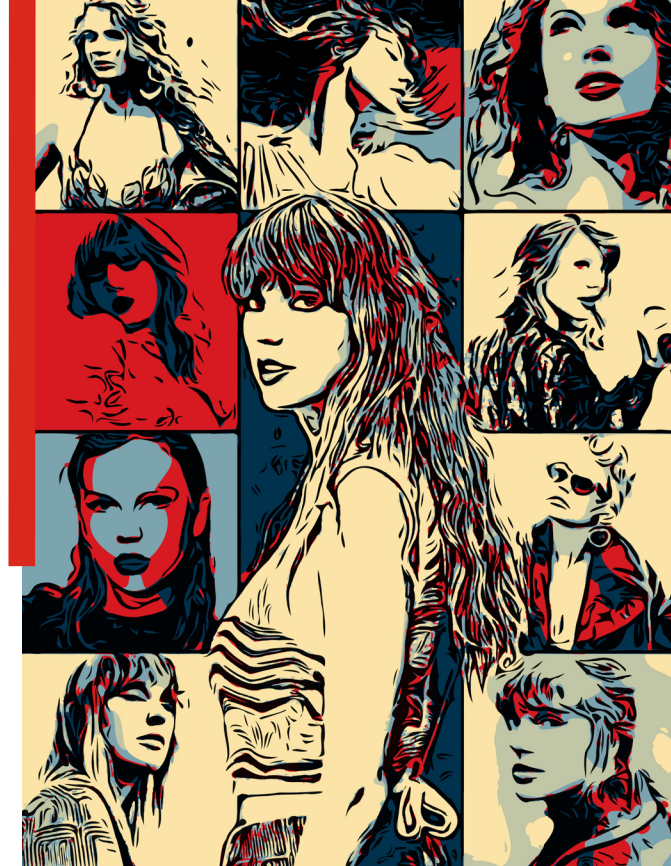
Swift's actions have had a considerable impact on the music industry, shifting the public's understanding of copyright law and inspiring legislative changes. The Music Modernization Act, for example, was passed in 2018 to make licensing fairer for creators. Furthermore, Swift's approach to reclaiming her masters has set a precedent for other artists, emphasizing the importance of carefully considering contract terms, especially regarding ownership rights and re-recording clauses.

Taylor Swift's copyright battles in the music industry serve as a powerful lesson for artists and creators. They underscore the importance of understanding and negotiating contractual terms and highlight innovative ways to maintain control over one's creative works. Swift's fight to reclaim her intellectual property empowers artists and industry

professionals to make informed decisions about their work, ensuring fair compensation and control over their creative outputs. Her journey is a testament to the power of strategic thinking in protecting intellectual property, offering valuable insights for musicians navigating the complex terrain of the music industry.



An avid Swiftie, intellectual property attorney Carrie Ward of Earp Cohn P.C. finds inspiration in Taylor Swift's lyrical journey and incorporates lessons from Swift's career into her legal strategies and teaching. She has over two decades of experience in business law, specializing in entertainment, communications, and media. With a keen focus on intellectual property protection, Carrie has established herself as a trusted advisor to a diverse clientele, ranging from media conglomerates to emerging start-ups, actors, filmmakers, musicians, and podcasters to protect their creative works, brands, trademarks, and copyrights.



JANE OF ALL TRADES, MASTER OF SOME DEVELOPING EXPERTISE IN A GENERALIST LITIGATION PRACTICE



Jessica “Jess” Gabel Cino is a seasoned trial lawyer adept at navigating clients through complex business crises, including litigation, investigations, fraud, financial misconduct, cybercrimes, RICO claims, and insolvency. With a focus on high-stakes civil and criminal matters, she leverages her extensive experience to serve clients across diverse industries, economic sectors, and jurisdictions. Leading high-profile corporate, internal, government, and higher education investigations, Jess is recognized for her strategic guidance. Prior to joining Krevolin & Horst, Jess was a tenured, full professor at Georgia State University College of Law, teaching courses in evidence, contracts, bankruptcy, and scientific evidence. She also served as GSU Law’s academic dean. Jess earned her J.D. from the University of Miami School of Law and her B.A. from the University of Central Florida.

Sada Jacobson Bâby is a litigation attorney with Krevolin & Horst, LLC who represents both plaintiffs and defendants in a variety of matters. Her practice focuses on business divorces, including corporate shareholder and LLC member disputes, and matters involving complex contract disputes and business torts. She also has experience with insurance coverage matters, construction litigation, and defending premises liability suits. Sada received her J.D. from the University of Michigan, where she served as Executive Note Editor of the Michigan Law Review, and she holds a B.A. from Yale University.



In litigation, being a generalist can offer versatility and adaptability. Attorneys with broad practices are comfortable tackling a wide array of legal matters and can competently handle most issues that arise. But as clients increasingly seek specialized talent, generalist practitioners may face challenges in establishing themselves as authoritative experts.

Generalists can develop their own brand of expertise with a targeted approach that balances breadth of knowledge with depth in selected areas. In this article, we explore strategies for lawyers aiming to cultivate particularized areas of expertise while maintaining their generalist practices.

1. BECOME AN EXPERT ON DISCRETE OR EMERGING LEGAL ISSUES WITH BROAD APPLICABILITY

Diversify your toolkit: Add to your generalist practice by focusing on discrete or emerging areas of law with broad applicability. At our firm, most of the litigators have broad practices, but each attorney has naturally developed certain areas of expertise:

one lawyer has become an expert on evidentiary issues; another has become an expert on statutory offers of judgment; another knows all the ins and outs of dispossessory actions. Although these are particularized issues, they recur regularly across a wide swath of clientele. Having an “in house” expert to consult is invaluable to our clients.

Stay ahead of trends: Monitor legal developments and industry trends to identify potential niche areas, such as privacy or cybersecurity. By staying ahead of the curve, you can position yourself as a thought leader in emerging fields and attract clients seeking guidance on cutting-edge legal issues. Write and speak about areas that interest you.

Expand your CLE horizons: Attend specialized CLE courses to deepen your knowledge in specific areas. These educational opportunities not only provide valuable insights, but also offer networking prospects with practitioners sharing similar interests.

2. BECOME AN EXPERT ON LEGAL PROCEDURE

Know the rules: Even when the substance of your cases varies, procedure remains a constant. It is worthwhile for a generalist to become an expert on local rules and procedure. You should also be well-versed on the practices of the judges presiding over your cases, including familiarity with their standing orders and case management preferences.

Master Alternative Dispute Resolution (ADR) techniques: In addition to understanding courtroom procedures, familiarize yourself with ADR mechanisms such as arbitration and mediation. Expertise in ADR can offer clients efficient and cost-effective solutions, especially in cases where litigation might not be the optimal route.

3. BUILD YOUR NETWORK OF SPECIALISTS

Forge strategic partnerships: The best generalists know when they can handle a matter, and when they need to involve a subject matter expert. Some areas of law are so complex and particularized that they require a lawyer with specialized training and experience. Other matters are best referred to a practitioner who handles that type of case regularly and can perform the required services with maximum efficiency. Establishing relationships with specialists in complementary fields can enhance your ability to provide comprehensive legal services to your clients. For our firm, associating with experts on estate matters, tax issues, and patents has been invaluable. Join professional associations, attend networking events and CLEs, and participate in online forums to connect and exchange insights with practitioners in target practice areas. Engaging in collaborative platforms will not only expand your professional network, but also foster continuous learning and skill development.

4. LEVERAGE COLLABORATIVE AND CROSS-PRACTICE OPPORTUNITIES

Promote collaboration: Draw on the experience of your colleagues, including those in different practice areas, to foster collaboration and knowledge-sharing. Know what types of matters your colleagues are working on, who their clients are, and which legal issues they commonly handle. Encourage cross-pollination of ideas and expertise within your firm by organizing cross-practice

workshops or CLE sessions. By leveraging your collective knowledge, you can enrich your understanding of legal issues and enhance client service.

Embrace mentoring initiatives: Implement mentoring and professional development programs in your firm to facilitate knowledge transfer and skill development across experience levels. Encourage more junior attorneys to explore areas that interest them and incorporate them into their emerging practices.

5. BECOME AN EXPERT ON LEGAL TECHNOLOGY

Be a proactive legal tech user: Legal technology tools and software can help a generalist streamline their research, case management, and e-discovery processes. Embrace a



proactive approach to technology adoption by investing time in learning new tools relevant to your practice. But proceed with caution. Misuse of legal tech, particularly generative AI, is a common pitfall. Make sure to have back-up systems in place in case of technology failure. Do not blindly accept any legal research or writing generated by AI without verifying the accuracy. And incorporate cybersecurity protocols and data protection measures into your practice to safeguard client information and maintain ethical standards.

Stay abreast of digital courtroom practices: With the increasing integration of technology in legal proceedings, staying updated


on digital courtroom practices and electronic filing systems is essential. Familiarize yourself with virtual hearing protocols and trial presentation software to navigate modern litigation landscapes effectively.

6. CULTIVATE YOUR PROFESSIONAL REPUTATION

Become an esteemed member of your legal community: Your most important asset as a lawyer is your reputation. If you establish yourself as a highly competent, professional, and trustworthy lawyer, referring attorneys will trust you to handle a wide variety of matters.

Prioritize excellent client service: Focus on delivering exceptional

client experiences by providing responsiveness, transparency, and tailored solutions. Establishing a reputation for client-centric service fosters trust and loyalty, driving referrals and repeat business.

In a legal landscape characterized by increasing specialization, litigation generalists must cultivate their own brand of expertise to remain competitive and meet client demands. By capitalizing on niche areas, honing procedural knowledge, building specialist networks, leveraging technology, collaborating with peers, and developing sterling reputations, generalists can successfully become trusted legal authorities while maintaining the versatility of a generalist practice. 

UNDERSTANDING THE ROLE OF URBAN PLANNING IN COLOMBIA FOR REAL ESTATE DUE DILIGENCE



Sandra Milena Lizcano Zea is a Partner at Pinilla, González & Prieto Abogados in Bogotá, Colombia, and has more than 19 years of experience in Planning, Urban and Real Estate Law. Sandra focuses her practice on advising companies to structure real estate projects and create urban development instruments. In addition, she is an expert in real estate due diligence in which she analyzes the property titles and different urban zoning plans to determine contingencies and their possible solution to enable the project development. She is also a specialist advisor in the agriculture industry, mostly in the implementation of land uses and land acquisition in rural areas.

Throughout 20 years of experience in the field of Urban Law, one thing continues to amaze me, and it is how the concept of due diligence has evolved into an essential part of any transaction involving real estate assets.

Once I became a lawyer, one of the first tasks I received was to perform real estate due diligence. At that moment, the instruction I was given was to analyze the chain of title, using the public information at my disposal in the real estate registry, to assess whether the ownership of the property did not have any issues, or if there were any legal contingencies, mortgages, liens or encumbrances that affected the title (mostly to analyze the basics). Once I finished my report, I was really satisfied with the outcome.

Years after, I changed jobs and started working at Pinilla, González & Prieto Abogados (PGP) in the Real Estate, Planning, and Urban Law Department, where I continued performing real estate due diligence on different properties but with an additional catch: the research was not only limited to the chain of title, it required also an analysis of the zoning plans and environmental regulations. That's how I started to see real estate due diligence in a broad sense, more complex and profound.

One of my first clients at PGP was an international financial company that aimed to invest in our country, buying all the assets from a local bank, which included all of its real estate properties. At that point, our duty was to carry out a real estate due diligence that, at first, gave us non-contingency results regarding the chain of title of the properties,

until we started to see the zoning plans and regulations of the assets which showed us that several of them had restrictions imposed by the land regulation given and were intended for public parks, without the option of developing any other possible uses, which significantly decreased their value. After a thorough and exhausting analysis, in the end, we achieved our goal and handed our client a report involving all the aspects required that let him make a conscious decision regarding the properties assets they were acquiring.

The aforementioned report was a transformative experience, as I understood our responsibility as outside counsel; to deliver a comprehensive analysis of the assets that goes beyond a verification of documents, and seeks a deep understanding of urban planning regulation, enabling stakeholders



to identify opportunities for value enhancement and strategic investment.

In the following paragraphs, I will try to explain some points regarding urban law in Colombia and zoning plans regulations, that will allow me to present why this area of expertise is today, more than ever, essential for any due diligence.

Colombia's urban planning law is governed by a complex regulatory framework that encompasses several statutes and national and local decrees. At its core, urban planning law aims to regulate land use, zoning, environmental protection, and community development to promote sustainable growth and enhance quality of life.

At a national level, the Colombian Political Constitution of 1991, in article 58, guarantees private property and other rights acquired under civil laws, which cannot be ignored or infringed by subsequent laws, unless there is a public utility or social interest project in which private interest must yield to the public or social good; it also determines that public entities will participate in the capital gains generated by urban planning actions and the different competent entities.

For purposes of developing this principle, Law 388 of 1997 was issued to promote the equitable use of land and the development of territorial planning by municipalities. Under this statute, municipalities are required to formulate Zoning and Land Use Plans (Planes de Ordenamiento Territorial – POT's), which outline long-term development goals, land

use policies, zoning policies, and spatial strategies. Zoning plans in Colombia delineate public areas and different land use zones and establish regulations governing permissible activities, building densities, heights, and setbacks.

In addition, Colombian urban zoning plans include environmental regulations that are mandatory for any kind of project, particularly for those with significant environmental impacts or located in environmentally sensitive areas – like those related to oil & gas, mining, construction, etc.

An environmental legal scheme, built over both local and national provisions, makes it difficult for an investor to assess whether to invest in real estate – directly or indirectly – or how to protect their investment; in this sense, we are convinced real estate due diligence:

- Needs to meticulously review zoning plans and regulations to understand zoning classifications looking to ensure proposed developments align with permitted land uses and comply with zoning requirements, minimizing the risk of legal challenges and project delays;
- Identifies and allocates potential legal, regulatory, and environmental risks associated with a property. This includes assessing zoning compliance, land use restrictions, environmental liabilities, and community concerns that may impact the viability of a real estate investment; and,

- Should incorporate stakeholder engagement strategies and participate in these processes.

Although all of this seems adequate from an academic perspective, is it possible to measure the success of the due diligence a law firm has performed? We think that it is possible, and for that, we are going to present some numbers that represent some projects that we, as a firm, and I as a counsel, have had the opportunity to participate in:

- We have counseled real estate transactions – buy and sell – for over 1 billion USD.
- We have advised construction companies in residential projects and have helped to create more than 300,000 residential units.
- We have guided international clients to invest in Colombia, in the development of more than 200,000 m² of commercial areas.

In conclusion, urban planning law in Colombia is a fundamental variable in real estate due diligence. By integrating technical knowledge of zoning plans, land use planning, and environmental regulations, stakeholders can participate in the real estate market in Colombia with confidence and foresight. Proactive engagement with legal experts and urban planners enhances decision-making, looks after sustainable development, and ensures the long-term success of real estate ventures in Colombia's dynamic urban landscape. **P**

BOTH SIDES OF THE BOARDROOM

HOW MY EXPERIENCE AS A DIRECTOR HAS INFORMED MY PRACTICE



Megan Wallace is the Not-for-Profit and Charity Law Group Lead at Mann Lawyers in Ottawa and was called to the bar of Ontario in 2010 and the bar of Alberta in 2015. Megan is currently a director, secretary and Chair of the Governance Committee of the Ottawa Board of Trade, a director and Chair of the Governance Committee of the Canadian Nurses Foundation and a director and member of the Governance Committee for Roger Neilson House.

When I sit in a boardroom as a professional advisor, I feel very comfortable in my ability to provide the organization and the board of directors with the best support possible – and a big part of the reason for this comfort is my experience on both sides of the boardroom table.

I am lucky enough to work with not-for-profits and charities in both my professional and personal lives. As a corporate lawyer who works largely with these unique organizations, I have spent a significant number of hours advising boards of directors in my professional capacity. As a volunteer director, I have also spent a significant amount of time serving as a director and officer. I believe that contributing my time as a volunteer director has given me additional perspective that has made me a better advisor to my

clients – not simply because of my understanding of the law, but because of my understanding of the sector and the experience of serving as a director. Not-for-profits and charities have unique needs, concerns, and pressure points – and developing an understanding of those from within those organizations has allowed me to provide advice that meets their needs as an external advisor.

WALKING IN A DIRECTOR'S SHOES

The expression that a person should walk a mile in someone else's shoes to understand them is an apt analogy in this context. Having worn the shoes of a volunteer director, I am able to speak to client boards and directors with an understanding of their role and concerns. This allows me to anticipate questions and to prepare materials or provide information that serves them well.

UNDERSTANDING THE CLIENT PERSPECTIVE

The more time we spend as lawyers, the better we get at understanding the needs and concerns of our clients – and my understanding of these needs and concerns has also deepened the more time I have spent in the not-for-profit and charity sectors as a director and volunteer. Sitting in the director's seat has allowed me to develop a sense of how different information is received and interpreted at the board table, the questions boards will have and the information they feel that they need to make an informed decision. Serving as a director has allowed me to see firsthand how the law and good governance (or a lack of adherence to same) can impact a corporation. As with many aspects of the practice of law, understanding the needs of your clients is key to the relationship



– and sitting on boards has deepened that understanding to make me more effective as a professional advisor.

SHARING MY PERSPECTIVE AND EXPERIENCE

I also believe that clients appreciate my perspective as someone who has been in a position to put the kind of advice I give into practice – not only do I understand the law, but I can also appreciate what it looks like to implement into the operations of an organization that I serve. This allows me to appreciate where recommendations can be inconvenient – and to provide insight into practical approaches and solutions to reflect my legal recommendations that I have seen firsthand.

SHARING PERSONAL BEST PRACTICES

When I can tell a client that a recommendation reflects my personal practice, I think this lends credibility to my recommendations and gives clients increased confidence in my advice. For example, conflicts of interest are a topic that often comes up in my practice – and my personal practices when I sit as a director are strict in this regard – I not only follow the law, but I also follow the strongest, best practices to protect myself and the corporation I serve. When I speak to a client board about issues like this, being able to speak from my own experience and tell them what I would do to protect myself in their shoes is helpful.

TRAINING THE BOARD

One of my favourite things to do professionally is training boards of directors on their roles, obligations, and liabilities. In the decade or so that I have been doing this training, I have learned a great deal from clients. When a client shares one of their experiences in the context of

LADY JUSTICE

training, it deepens my knowledge of potential client concerns. Often during a training session, a client asks a question that I have never heard before, or introduces a nuance I hadn't considered into a topic. These kinds of interactions have deepened my understanding of the law, what clients need from me, and the issues that they can face. I also have one client who delights in trying to stump me at the annual board training session and prepares tough questions and weird fact scenarios in advance (not that he gives them to me in advance!) – in addition to this being a great deal of nerdy fun for both of us, it has also served me well in talking a full boardroom through an interesting or unique question or scenario.

When I sit in a boardroom as a retained lawyer or a volunteer director, I feel confident and that I have a lot to give as a subject matter expert. Part of the reason for this confidence is that I have experience on both sides of the boardroom – both as an advisor to boards of directors and as someone who has had a number of roles as a volunteer director and officer. When I started volunteering as a director as a new lawyer, I saw it as a way to give back to my community – I didn't see it as a tool to develop and deepen my professional practice; however, looking back it has done just that and I am grateful. **P**



ESTATE PLANNING FOR WOMEN TO THRIVE



Veronica Garofoli, of Schneider Smeltz Spieth Bell LLP, focuses her practice in the areas of probate and trust litigation, probate and trust administration, and estate planning. She provides representation to clients in all aspects of probate, trust and estate disputes. She prosecutes and defends cases for families and fiduciaries, including will and trust contests involving charges of undue influence and lack of mental capacity, declaratory judgments involving wills and trusts and fiduciary duty related actions. She also advises individuals and fiduciaries in estate, trust and guardianship administrations and designs tailored estate plans for her clients.

Veronica is married to the love of her life and together they are raising two strong, beautiful daughters. She recognizes the importance of managing the demands of a growing family and a growing legal practice, while still investing the time to give back to the community by serving as a Visiting Judge in the Shaker Heights, Ohio Municipal Court, as a Board Member for the Cleveland Metropolitan Bar Association, and a Trustee for the Cleveland State University College of Law Alumni Association.

Lady Justice is one of the most recognizable symbols of the judiciary in the United States. She is blindfolded because justice is unbiased and should not be based on a person's appearance or other outside influences. Her hands hold tipping scales which represent the importance of a balanced decision.

Like Lady Justice, women are often performing a balancing act of maintaining relationships and responsibilities. As a daughter, mother, grandmother, businesswoman, or wife, a woman may assume various roles during her lifetime as it relates to herself, her parents, her partner, and her progeny. At different stages of life, she may be a single mother and primary breadwinner, the caretaker of her parents or grandparents, a newlywed, a widow, or a divorcee. Her nest may never be truly empty. As women devote themselves to the care and protection of their

family, a woman's estate plan should preserve her legacy and ensure that the relationships she's sewed among family members endure.

LIVE LONGER, PLAN LONGER

According to Scientific American, women have outlived men for more than a century in the United States. Today, the gap in life expectancy between American men and women is nearly six years. When you look at our country's founding documents, women were utterly invisible. They were property. They belonged to their fathers and their husbands and were otherwise immaterial. Our nation's history is full of trailblazers and unsung heroes who fought tenaciously to advance the equality of women for future generations. While we have seen important progress for women and girls, change has been uneven and incremental.

Modern day women typically make less during their careers, and they

generally have less in savings due to pay discrepancies and time taken out of the workforce to raise their families. The result is women generally pay less into social security and retirement. Although, as women generally outlive men, their assets need to last longer, and women need to plan for when they are unable to care for themselves and at their death.

Along with all the positive aspects of a longer life come the reality that there is a greater incidence of mental and physical decline in one's later years. While this issue is difficult to confront, women should plan accordingly with a durable power of attorney to designate an agent to make financial and medical decisions in the event of becoming incapacitated. Without an estate plan, the court will designate a guardian to manage her finances and medical care.

BUILD A LASTING LEGACY

Estate planning can be a powerful tool for achieving financial freedom and security, not only for yourself but those you love. Women often inherit twice in their lifetime, typically from their parents and a second time if they outlive their spouse. Many women at some point assume full responsibility for managing assets and determining who will ultimately inherit them. This is especially important because over the next two decades, trillions of dollars will be passed down from grandparents and parents to their family and loved ones. Estate planning starts with removing the blindfold and taking inventory of what types of assets you own and have an interest in, determining how they are titled and gaining access to them. If you own a business, consider whether you would want your business to continue operations in your absence. If so, you should have a business succession plan to facilitate that transition.

Every person over the age of 18 should have an estate plan, and while there is no one-size-fits-all plan, there are special considerations that women, particularly, need to know. Some of the common reasons and benefits for women to create an estate plan include the following:

- Designating who will care for you in the event of incapacity
- Protecting your children
- Avoiding the time, expense, and publicity of probate court
- Avoiding disputes in blended families
- Organizing multiple inheritances
- Building generational wealth
- Creating guardrails for when and how your beneficiaries receive assets
- Designing succession planning for your business
- Implementing tax savings strategies

EVOLVING WOMEN, EVOLVING PLAN

While our daily lives are important, it's equally important to plan for the future and make sure your estate plan is aligned with your wishes and goals. Without a plan, your assets and care may be subject to the laws of your state, which could result in decisions being made by strangers. Women, who were historically treated like property, are in a position today to build wealth, protect themselves, their best interests, their family, and their assets. As life is constantly evolving, your estate plan should also evolve to reflect your changing needs and wishes. With the right guidance and team of professionals, women can stay on top of their estate plan, be ready for whatever their future holds and make our Lady Justice proud. **P**



BEING A FEMALE CRIMINAL LITIGATOR FEATURES AND EXPERIENCES THAT HAVE BUILT MY PROFESSIONAL PROFILE



Laura Pinilla de Brigard is an associate lawyer in Pinilla González & Prieto Abogados. She is a lawyer specialized in Criminal Law with more than 12 years of experience. She focuses her practice on providing legal advice and judicial representation of both legal entities and individuals in criminal law, especially in cases related to white collar crimes and crimes derived from real estate management, as defense attorney or representative of the victim; disciplinary and police law; and restoration of rights. She also advises clients on real estate due diligence related to criminal matters to determine, manage, and prevent legal action by the State to execute civil judicial forfeiture against their properties.

Being a female criminal litigator is not easy. It is much less so to be a female criminal litigator in Colombia, where crime continues to be a protagonist of society and where the most recognized criminal lawyers are men. However, the world of criminal law is full of women, whether they are lawyers, judges, prosecutors, or procurators¹. But why is that?

What I have observed is that some characteristics that tend to be more developed in women than in men, play a decisive role in this fact and have been important in my personal professional experience: humanity, sensitivity, and responsibility. Also

having a detailed approach to each case and providing comprehensive legal advice has improved my experience as a litigator.

After many years of practice, I'm finally aware that one of the issues that mostly attracted me to criminal law, was that it is, perhaps, the most human area of law. Seen from the offender's point of view, his condition has a lot to do with his background, his most intimate passions, his decisions, and his opportunities or the lack of them, among others. All personal circumstances have something to do with a criminal and studying this personal stage of

individuals at the university was amazing for me.

In addition, in professional life the whole proceeding creates a lot of intense emotions in the client (whether innocent or not) and you, as attorney, must be able to identify them and help him to deal with them to have success in the case. His freedom is being discussed!

On the other hand, from the victim's point of view, it is also a very human scenario. Regardless of whether the client has the right or not, most cases strike a chord within him and, again, you as a lawyer must be there to deal

with those emotions and pursue his personal and, in some cases, financial redress in one way or another.

So, a criminal proceeding affects your client's entire personal life.

We, as women are very good at identifying emotions and that is a characteristic that has been important in my case. It has allowed me to identify the interests and concerns of each client and address them strategically to provide a more human legal advice and representation, making clients feel listened to, important, and protected, despite how hard it can be to go through a criminal process.

Connected to the above, sensitivity allows me to attend to each case as if it were my own, only without the emotional burden that comes with being one of the parties in it, understanding and addressing the client's concerns that appear in the different stages of the judicial process. Finally, responsibility is essential for being a support center when necessary and for always exposing to the client all the possible legal avenues to resolve the case and their pros and cons.

Another important characteristic is to carry out the work with a high level of detail. Women also tend to see the smallest details in everything, a very important characteristic in criminal litigation: knowing every detail of the facts, evidence, and investigation; and being aware of every mistake in the procedure or any mistake by the prosecutor or your counterparty.


Any of these details can be a good opportunity to achieve one or more victories in the client's interest. Likewise, any seemingly irrelevant detail may hold exculpatory evidence. A feature that fortunately came with me, I enjoy using it and my mentors at

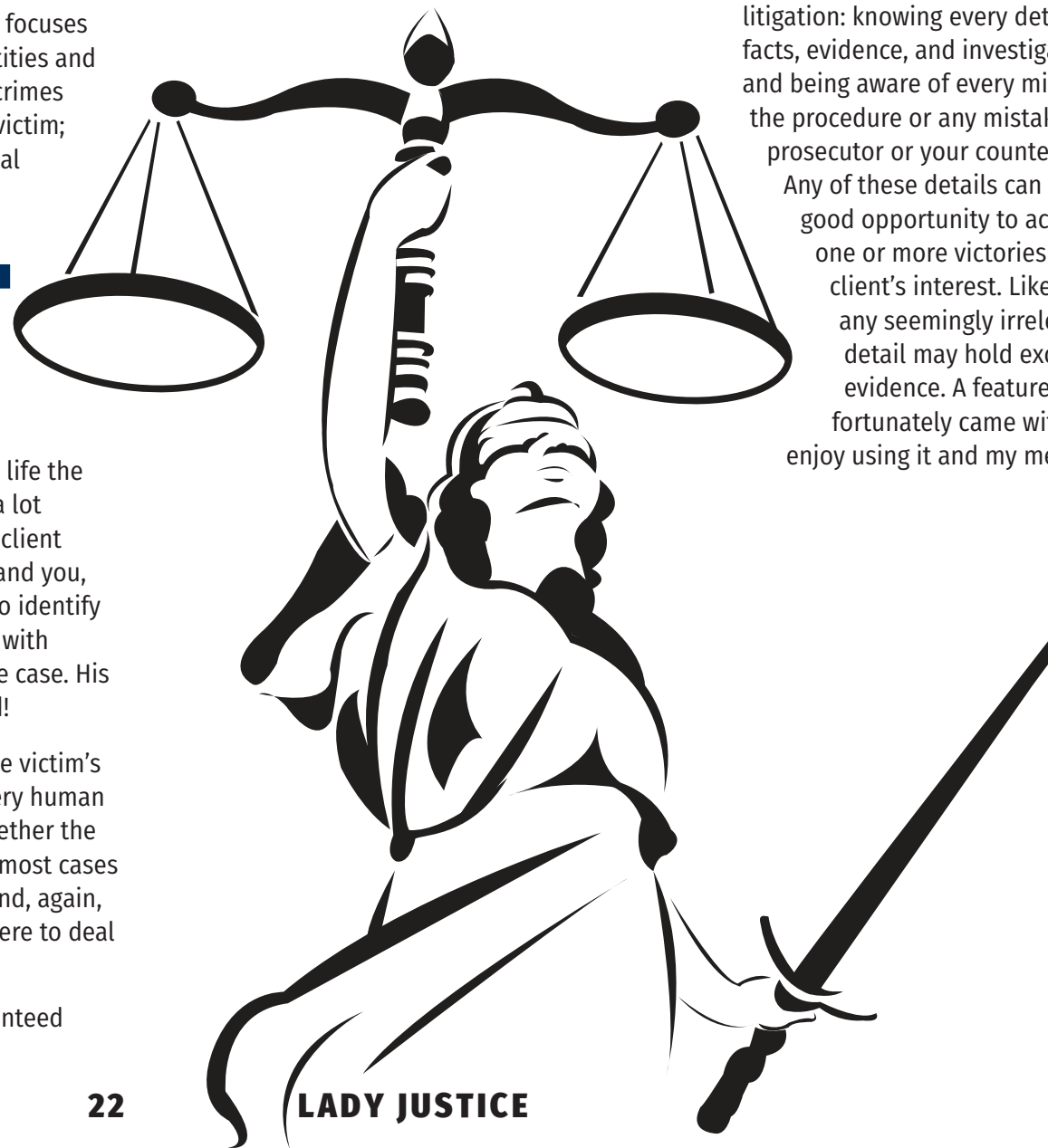
PGP taught me to put it into practice in law and to develop it, especially my father who has been my boss and mentor for the longest time.

Finally, the comprehensive approach to each case is a tool that I have had the opportunity to know, learn, and develop thanks to working in a full-service firm where the criminal area is one among many, and to its policy of addressing each case with that specific approach, a characteristic I probably would not have if I were still working at a firm specialized in criminal law, despite the valuable knowledge I acquired there.

In fact, the first cases in the area were derived mainly from real estate law, land planning law, and civil law. The founding partners have always had a policy of providing comprehensive legal work and that is something that I fit perfectly into, because I love learning and, as I said, detailed work.

A comprehensive approach to the case means establishing and executing the legal strategy not only from the criminal point of view, but also from the scope of the other areas involved, such as real estate, land planning, civil, tax, public, corporate, environmental and/or family law, among others. This work methodology has been consolidated in the area to the point that now I cannot conceive of a case treated solely from a criminal point of view. This leads us to always do teamwork with the other areas involved, which in a full-service firm is not only possible, but easier.

In conclusion, being a woman, some of my personal characteristics, working at PGP, my mentors, and the cases I have worked on have been a perfect combination to be the criminal litigator that I am now and for my professional development. 



¹ In Colombian legal system, procurators have the function of ensuring that the rights of the parties are guaranteed during the process.

CHAMPIONING THE VULNERABLE THE CRUCIAL ROLE OF ADVOCACY FOR ABUSED AND NEGLECTED CHILDREN



Cassidy Stalley is a partner at Lynn, Jackson, Shultz & Lebrun in Rapid City, South Dakota. Her primary practice area is in litigation. She graduated, magna cum laude, from the University of Mary in Bismarck, North Dakota, and obtained her law degree, with honors, from the University of South Dakota. Cassidy was a judicial clerk for the Second Judicial Circuit of South Dakota before entering private practice.

Cassidy is an AV-rated attorney. In 2019, she was selected by the Pennington County Bar Association as Outstanding Young Lawyer. Cassidy is a volunteer youth soccer coach and President of the Rapid City Catholic School System School Board. Cassidy and her husband Jared have three children. They enjoy playing sports, boating, and exploring the great outdoors.

When I was a brand-new lawyer, my mentor and partner encouraged me to take judicial appointments for abused and neglected children. She noted the great need for quality representation, but also thought it would be a way for me to get in front of our circuit judges and that it would serve as a valuable training ground as a litigator.

My mentor was so wise.

In South Dakota, abuse and neglect proceedings are civil proceedings. Any child alleged to be abused or neglected is appointed an attorney who represents the child's best interests and may not be the attorney for any other party involved in the proceedings. Attorneys who

feel called to represent children are required to complete training developed by the South Dakota Unified Judicial System and be certified abuse and neglect trained attorneys. The abuse and neglect docket is handled by a single circuit judge; the docket rotates approximately every twelve to eighteen months.

Children come into the State's custody and the court system through mandatory reporters, private citizen referrals, pick-up and place orders, and law enforcement. After a child is taken into temporary custody, an emergency temporary custody hearing is required to be held within forty-eight hours, excluding

Saturdays, Sundays, and court holidays. Attorneys for the parents and children are appointed at or prior to the emergency temporary custody hearing.

If continued custody is granted at the emergency temporary custody hearing, I then meet with the child or children, as well as with the foster parents or family members who the child or children have been placed with for the pendency of the case. Depending on a child's age, I explain my role, and if old enough, ask a child what he or she wants to happen or what he or she wants the judge to know. As you can imagine, generally all children want to be returned to the custody of their parents. But



occasionally, children voice that they would rather be somewhere safe and not with their parents.

Throughout the case, I rely on the Department of Social Services to provide me with updates, but I also routinely check in with the children, as well as the foster parents or family placements to hear how a child is doing and if there are any concerns.

After the initial emergency temporary custody hearing, additional hearings are generally scheduled every thirty to sixty days. A typical abuse and neglect case can take anywhere from three to twelve months, or beyond. An abuse and neglect case ends in either dismissal, with custody being returned to the parents, a guardianship, or termination of parental rights.

Since becoming a certified abuse and neglect trained attorney in 2013, I have been appointed to approximately 170 cases and represented over 315 children. I have appeared nearly weekly in front of six different circuit court judges. I have taken a few cases to the Supreme Court of South Dakota and established new law. And my experience has been invaluable.

Indeed, I have been involved in numerous contested and evidentiary hearings, in which I have had to cross-examine witnesses, including parents whose rights are about to be terminated, Department of Social Services employees who are overworked and often inexperienced, Indian Child Welfare Act experts, and even physicians, generally all on the fly. Certainly, as an attorney, I am provided with discovery throughout the case, including the Department of Social Service's records, notes, and narratives, as well as police reports, medical records, and other agency investigative reports. But when a witness gets up to testify, particularly a parent, you must be prepared for anything in these cases. There are no depositions, interrogatories, or requests for production of documents. Instead, I have learned to know the record inside and out and honed my listening and observation skills. Without a doubt, these hearings have enhanced my cross-examination skills in my litigation practice.

Not to mention the hundreds of little lives I have tried to make

better through my advocacy for their best interests. I have held tiny babies addicted to meth, held space with teenagers who make the brave decision to testify against their parents and request that their parents' parental rights be terminated, and held back tears of joy when parents put in the work to change their behaviors and become better parents for their children.

I now encourage all new attorneys to consider becoming certified abuse and neglect trained attorneys. As my mentor observed long ago, being a certified abuse and neglect trained attorney has been an invaluable training ground in a legal landscape where jury trials are becoming few and far between.

I view my role as a service to the bar, but more importantly, to the greater good. I have been blessed with the skills and work ethic to be an effective advocate. I am grateful that I can use those skills for the least among us, in hopes that I can somehow change their lives for the better. **P**



GREEN MARKETING

TIPS TO AVOID THE DIRTY CONSEQUENCES OF GREENWASHING



Sedina L. Banks is a partner in Greenberg Glusker's Environmental Group specializing in environmental compliance and litigation. She counsels and represents companies in a wide range of environmental matters related to regulatory compliance, leveraging her over two decades of experience to craft creative solutions to complex environmental problems.

Sherry E. Jackman is an environmental litigator and compliance counselor at Greenberg Glusker representing entities facing challenging and complex environmental issues. A significant portion of her practice centers upon consumer products law—including labeling, advertising, and product regulation.



Increasingly, companies are eager to showcase the environmental benefits of their products and practices. So-called “green marketing” can be an effective tool in a company’s marketing and corporate public relations strategies as environmental sustainability and awareness become more important to consumers. A company’s green marketing claims are permissible when they accurately and legally portray the environmental benefits of a company’s products and practices.

Companies engaging in green marketing, however, must exercise caution to ensure that green marketing claims do not inadvertently slip into the deceptive realm of “greenwashing.”

Greenwashing generally occurs when companies misleadingly market the

supposed environmental benefits of their products or practices. Many credit the first use of the term “greenwashing” to environmentalist Jay Westerveld, who possibly coined the term in the 1980s. When visiting a resort, Mr. Westerveld observed a note directed to customers asking them to reuse their towels to reduce ecological damage and help save the environment. He thought the request was not environmentally motivated, but rather served as a cost-savings mechanism. Almost four decades later, the concept of greenwashing remains highly relevant.

Classic examples of greenwashing include: (1) misleading or vague labeling (e.g., eco-friendly, all natural), (2) emphasizing the environmentally beneficial aspects of a product or practice, while minimizing

environmentally problematic aspects, and (3) including misleading “green” imagery (e.g., pictures of forests and streams on the packaging for an environmentally harmful product).

Companies engaging in greenwashing face consequences ranging from private lawsuits, public lawsuits brought by state and federal agencies, and reputational damage. A company’s goal to obtain consumer goodwill through green marketing can quickly turn sideways if the company is accused of engaging in greenwashing. For that reason, companies must be mindful of these issues when undertaking any green marketing campaign.

Here are some tips to avoid the dirty consequences of greenwashing:

1. GREEN MARKETING CLAIMS MUST BE FACTUALLY SUPPORTED

A company cannot make a green marketing claim based on aspirations or euphoric-sounding taglines. Companies must ensure that facts support the claim. Some states, like California, actually have recordkeeping requirements that a company must follow when making green marketing claims, including records of the factual basis for the claims.

2. GREEN MARKETING CLAIMS MUST BE LEGALLY COMPLIANT

Companies must understand the legal requirements for asserting specific green marketing claims. There are numerous laws and regulatory guidance that can potentially impact a company’s green marketing claims. For example, the Federal Trade Commission has published the Green Guides, which are designed to help marketers avoid making environmental claims that mislead consumers. States can, and do, adopt more stringent green marketing requirements that must be followed. There also may be product-specific federal and state laws that have green marketing implications. Finally, environmental, social, and governance (ESG) considerations are relevant to green marketing claims.

3. AVOID UNQUALIFIED ENVIRONMENTAL BENEFIT CLAIMS, BE SPECIFIC, AND FOREGO OVERSTATING BENEFITS

Companies must avoid unqualified environmental benefit claims such as “eco-friendly” or “all natural.” If average consumers were polled, there would be no general consensus regarding what these terms mean. Such ambiguity in terms, without qualifying information, renders a company potentially liable for greenwashing.

Companies should also make sure that when a consumer reviews the claim, the consumer can be reasonably expected to know what the company is asserting and what environmental benefit the company is claiming. Likewise, the claimed environmental benefit cannot be an overstatement of the actual benefits.


4. LEGAL AND MARKETING TEAMS SHOULD WORK TOGETHER

Marketing is typically a separate division from legal, which is usually fine. But if a company is going to engage in a green marketing campaign, it is advisable to have legal counsel involved to ensure that any claims, including those made on product labels, comply with the law. Again, there are a lot of nuances to

the types of green marketing claims that a company can legally make. An uninformed marketing team not up to date with these requirements can create company risk and liability. Therefore, it is imperative that marketing and legal teams work together in developing a green marketing strategy.

5. PERIODICALLY AUDIT MARKETING FOR CONTINUED COMPLIANCE

Green marketing campaigns must be periodically monitored to ensure continued compliance with the law. A claim that was legally sound a few years ago may no longer be allowed. Company turnover and staff changes can also mean that the newest members of the marketing team lack awareness of previously discussed legal requirements. It is important for companies to periodically review and reassess a green marketing campaign to ensure that something did not fall through the cracks or otherwise change (either factually or legally), which renders a previously permissible claim now risky or illegal.

While implementing these tips may seem onerous and lead companies to believe that the cost of compliance is too great, companies should consider the significantly graver expense associated with noncompliance. An ounce of prevention can help minimize the chance that a company is faced with multi-million-dollar liability, tarnished brand reputation, or consumer boycotts. 



FORMER PROSECUTOR MAKES SMOOTH TRANSITION TO CRIMINAL DEFENSE WORK WITH NOTED NEW JERSEY LAW FIRM



Stacey E. Zyriek Enriquez is Counsel in Mandelbaum Barrett PC's White Collar and Criminal Defense practice. Zyriek joins the firm from the Union County Prosecutor's Office, where she was an assistant prosecutor and special assistant United States Attorney, and will be based in the firm's Roseland, New Jersey, office.

As an Assistant Prosecutor at the Union County's Prosecutor Office for the last decade, Zyriek was assigned to the Major Crimes, the Special Victims, the Trial, the Juvenile Justice, the Megan's Law, and the Appellate Units, where she tried over 20 criminal cases to verdict, all while being responsible for the vertical prosecution of up to 75 cases at any one time. During her time as a Special Assistant United States Attorney in the United States Attorney's Office for the District of New Jersey, Zyriek handled complex cases, including wiretap investigations.

Zyriek earned a J.D. from New York Law School, and a B.A. in Criminal Justice from Rutgers University. She is admitted to practice law in New Jersey and New York.

By Brian Cox

New Jersey criminal defense attorney Stacey Zyriek Enriquez knows how to be resilient, tenacious, and driven because as a child she witnessed her mother model those qualities when she unexpectedly became a young, widowed parent of two daughters.

Her father's sudden death when she

LADY JUSTICE

was 8 and her mother's formidable response to the loss served to shape the backbone of who Zyriek Enriquez is as a person and as an attorney.

"I was young, but I knew how devastated and heartbroken my mother was," recalls Zyriek Enriquez. "Yet, within a month of my dad's passing, she found a job and worked

very hard for the next 30 years of her life to provide for my sister and me."

The loss of her father also instilled within Zyriek Enriquez a clear understanding that no day is a guarantee and a commitment to live life to its fullest.

Her parents met while working for an airline where her mother, Maria,

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was a flight attendant and her father, Gary, was a pilot. The couple married a year later and, though Maria was from Guatemala, they settled down in Gary's home state of Alabama where they lived for more than a decade. When Zyriek Enriquez was 4, her father chose to give up flying, which had required him to be away from home far too much, and the family moved to Guatemala in order to be nearer to her mother's extended family in Guatemala City.

"We were a very tight-knit family," says Zyriek Enriquez, who spent her childhood weekends among cousins, aunts, uncles, and her grandparents in Guatemala. She also visited her father's family in Texas and Alabama during her summer vacations.

On occasion, everyone would visit a farm her grandparents owned that was hours away from the city and could only be reached after a lengthy car ride and then by horseback. More than 100 years old, the farm had no power and other modern amenities, but Zyriek Enriquez recalls days spent on the family farm with great fondness.

It was through her grandfather, who was a lawyer, that Zyriek Enriquez got her first "job" in a law office.

"He would let me spend time at his firm, and pretend that he was giving me serious assignments, like typing documents on a manual typewriter," she says with delight. "He made me feel special."

What is more, Zyriek Enriquez was impressed with how her grandfather was able to help people through his practice of law and dedication to providing pro bono services to the underprivileged community in Guatemala.

LADY JUSTICE

"I got to see firsthand how being a lawyer could have a great impact on people's lives, which inspired me to become a lawyer," she says.

After Zyriek Enriquez's father died, her mother found work at a university and then with the government. She eventually became a diplomat and when she was offered a position as the Consul of Guatemala in New York, she took it.

The announcement that they were moving back to the U.S. was a bit of a shock to Zyriek Enriquez, who was 16 at the time.

"I came from being part of a tight-knit family and a close circle of friends to suddenly my mom saying we're moving to New York," she says. "I was extremely sad and also terrified."

It was an emotionally difficult transition to leave Guatemala where she was surrounded by friends and family to begin a new life in Hackensack, New Jersey, where she knew no one except her mother and older sister, Lauren.

"It almost felt like it was the three of us against the world," she says.

But she soon embraced her new home's diversity, which was so different from her experience in Guatemala. The people who became her friends in high school were from all over the world. She had friends from Bulgaria, Albania, Iran, and elsewhere.

"I loved learning about different cultures and traditions," she says.

Despite the early challenges of adapting to a new country, Zyriek Enriquez excelled in high school and went on to study criminal justice at Rutgers University, where she began eyeing a legal career.

The financial commitment of law school, however, caused Zyriek Enriquez to carefully consider the choice. "If I was going to go to law school, I had to be 100 percent certain that I wanted to be a lawyer" she says. "My mom always instilled in us that we needed to be self-sufficient and be able to depend on ourselves. She also stressed the importance of picking a career we enjoyed."



Zyriek Enriquez and her new fiancé Jason Sensale, in Asbury Park.

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To answer that critical question, she decided to find a job with a law firm after graduation. She didn't have much luck initially because of her lack of experience in the legal field. As she continued her search for opportunity, she took an administrative position with a gas company. It was a casual conversation with a doorman that led to her meeting Patrick A. Mullin, a successful criminal defense attorney who lived in the same building.

A well-established solo practitioner, Mullin offered to hire Zyriek Enriquez part-time in the evenings. She jumped at the chance, and for the next several

months, after her day job at the gas company, she worked at the law firm until late into the night and Saturdays as well.

"I convinced him of how eager and dedicated I was to gain legal experience," she says. "My mom always said, you can do anything you want as long as you work hard at it, and I was definitely willing to do so."

Mullin, who handled mostly complex federal criminal cases, took Zyriek Enriquez under his wing and became a mentor, which she was very grateful for. "Mullin was an incredible

litigator," she says. "He was extremely hard working, ethical, professional, and respectful. No matter its size, he considered every case just as important as the next."

After two years, Zyriek Enriquez was convinced that being a lawyer was her calling. She attended New York Law School in Manhattan while continuing to work for Mullin part-time.

After passing the bar, Zyriek Enriquez clerked for the Superior Court in the criminal division for a year. She then joined the Union County Prosecutor's Office as an assistant prosecutor,

starting in the appellate division and eventually working her way through a host of units, including juvenile, special victims, and narcotics.

"I took full advantage of all the opportunities working for the government could provide," she says. "I was also very eager to try cases as I wanted to gain experience as a litigator."

Zyriek Enriquez tried more than 20 cases, ranging from narcotics distribution and firearms offenses to violent offenses such as robberies, aggravated assaults, homicides, and sexual assaults. The valuable trial experience she gained during that time honed her skills as a trial attorney, and in 2018, she was certified by the Supreme Court of New Jersey as a Criminal Trial Attorney.

Zyriek Enriquez also served two years as a Special Assistant United States Attorney in the U.S. Attorney's Office in the District of New Jersey, where she was assigned to the violent crimes unit. During this time, she led several investigations and prosecutions of narcotics distribution, weapons offenses, and violent crimes, all of which had impactful results in communities of New Jersey.

It was during her time at the U.S. Attorney's Office that she met and befriended Robert C. Scrivo, a veteran assistant U.S. Attorney and special counsel whom she came to greatly respect and whose opinion she valued. Not long after, Scrivo left the U.S. Attorney's Office to co-chair the White Collar and Criminal Defense Practice at Mandelbaum Barrett PC.

Last year, Scrivo called Zyriek Enriquez with a question: Would she consider moving into private practice and joining him at Mandelbaum Barrett? He pitched the firm as being comprised of highly qualified litigators, collegial, family friendly, and committed to contributing back to the community. As she gave the offer thought, it became clear to Zyriek Enriquez that it was the right time for a change.

"The time came when I wanted to bring the same level of dedication and advocacy that I brought to the victims of crimes and representing the government, to clients in private practice."

Zyriek Enriquez values the firm's support and celebration of diversity and inclusion, and says, "I feel that I am where I was meant to be."

It was a smooth transition from prosecutor to criminal defense attorney. Her experience and skills as a litigator were transferable, of course, and she approaches cases with the same outlook. Zyriek Enriquez strongly believes that being able to properly analyze the strengths and weaknesses at the outset of a case is crucial in arriving to an appropriate resolution.

Being bilingual has proved tremendously beneficial as well toward establishing trust with clients who find reassurance in communicating in their native language.

Zyriek Enriquez brings to her practice a philosophy she learned all those years ago as a new college grad working late nights at Mullin's criminal defense firm, which is to treat every single case with the utmost importance.

"When clients come to us – especially if they've been charged with a criminal offense – they are facing one of the most challenging times of their lives. I want to guide and counsel clients, while zealously advocating on their behalf."

Passionate about traveling, Zyriek Enriquez gets back to visit family in Guatemala as often as possible and has visited approximately 25 countries. She recently returned from the Atacama Desert in Chile where she was awed by the canopy of stars at night. While traveling, she enjoys immersing herself in the country's culture, from its food to its entertainment. Several years ago, she attended the Military Tattoo at Edinburgh Castle in Scotland where hundreds of military bands performed on bagpipes.

Zyriek Enriquez also has a sense of adventure, having gone sky diving three times – the first time was on her 21st birthday.

She is always up for the next challenge.

"As I said, live life to the fullest," she says with a laugh. "No day is guaranteed." **P**

Zyriek Enriquez enjoys traveling and immersing herself in local cultures. Among the most awe-inspiring places she has visited is the Atacama Desert in Chile where she went stargazing.





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