

# FAMILY LAW

## History, Bar Associations and Family Law

INTRODUCTION TO MAGNA CARTA LEADS TO REFLECTIONS ON LEGAL SYSTEM

By **DORI B. HIGHTOWER**

They say we learn everything we need to know in kindergarten or in this case high school, but truly I must admit, I am still out there learning and am grateful for every gift of intelligence that is bestowed on me. These gifts come in all shapes and sizes and each one helps me to be a better lawyer for my clients and the self-represented individuals I meet in courtrooms.

This year marks the 800th anniversary of the sealing of the Magna Carta in 1215. The American Bar Association and Law Library of Congress are celebrating this anniversary with a traveling exhibit that will educate lawyers and nonlawyers alike about the history of the development of the “rule of law.”

From Nov. 6, 2014, to Jan. 19, 2015, the Library of Congress hosted one of the four original 1215 exemplifications of the Magna Carta in Washington, D.C. Thereafter, a traveling exhibit will be on display throughout the country for attendees to enjoy and stimulate discussion about the history of our legal system.

**Rather than complain about the unfairness of some decisions or boast about the triumphs of our cases, I urge you to broaden your understanding of the backbone of the system.**

I initially learned about the Magna Carta traveling exhibition through my involvement with the Connecticut Bar Association. My participation on the CBA Unauthorized Practice of Law Committee led to my being encouraged to join the American Bar Association. Then I was honored with an invitation to participate on the ABA Standing Committee on Law Library of Congress.

Before this, my exposure to the Magna Carta was limited to a high school history class and law school references during my constitutional law class that highlighted the fundamental concepts of liberty that were transplanted to the American colonies.

I am a family lawyer. My practice is focused on issues of divorce, custody and the division of assets. At this point you are probably asking yourself: What does the Magna Carta have to do with the practice of law and due process?

My involvement working on the Magna Carta project has caused me to view our legal history and the practice of law with greater appreciation and a deeper understanding of the laws that fundamentally guide the practice of family law.

My experience on the CBA UPLC has led me to understand the challenges all lawyers are facing in today’s world. The legal profession is changing right

before our eyes. The rise of selfrepresented litigants and the increasing practice of law on the Internet are changing how the “rule of law” plays out in our courts on a daily basis.

### Constraining Power

When I think of the “rule of law,” due process and all it entails frequently come to mind. Due process is defined as the legal requirements that the state must respect with regard to all of the legal rights that are owed to a person. Simply put “due process” usually means 1) notice (generally written), 2) a right to be heard (to complain or disagree with the government or entity that has decision-making authority) and 3) the right to appeal if not satisfied with the outcome.

Due process is intended to balance the power of the law and protect the rights of individuals. When a government harms a person without following the exact course of the law, this constitutes a due process violation, which offends the rule of law. The development of due process protections can approximately be traced back to the 1215 Magna Carta and subsequent versions. The Magna Carta constrained the

powers not only of the king but also of the barons. Through the Magna Carta, the barons helped to administer the laws as do today’s judges in the U.S.

What makes the Magna Carta so significant in terms of today’s law is that it reduced the absolute power of the king and introduced the concept of legal interpretation to include a level of due process that has filtered down in varying strengths and compositions over the years. Granted, I am painting with broad strokes and tremendously simplifying centuries of jurisprudence to reflect on the current American legal system.

It is somewhat rare given the pace and pressures of our chosen vocation that we have the ability to reflect on the whys and wherefores and how the law came to be. Having the luxury of doing so while preparing and actually writing this article was an opportunity to delve into the origins of our legal system and its relevance to our profession today. Rather than complain about the unfairness of some decisions or boast about the triumphs of our cases, I urge you to broaden your understanding of the backbone of the system.

Given my new knowledge of the history of the Magna Carta and its circuitous relationship to U.S. jurisprudence and the development of due process

rights, I began to make the mental connections to the Connecticut Practice Book Rules and the Connecticut Rules of Evidence and, of course, our case law.

“Work hard to master the rules of evidence” should be a common mantra in our field. This is a constant work in progress for me and has taken on new meaning based on my increased curiosity and knowledge of the historic basis of the U.S. and Connecticut legal systems. My involvement with the Magna Carta project has caused me to have an “aha” moment: If you master the rules, from motion practice to discovery to hearings and trial, those are your tools to protect the rights of our clients.

Knowing and understanding the facts of our cases, policy issues and rules of law are how we as members of what is a noble legal profession protect our clients and assist self-represented litigants during some of the most difficult periods of their lives. My involvement with the CBA and the ABA has been invaluable and enriching to my development as a family lawyer and a human being.

As we begin this New Year, I urge my fellow lawyers to become active in the CBA and the ABA. Join a committee and participate as your schedule allows. Work on a subject area that may appear to have nothing to do with your immediate practice area and be prepared to grow. When you see someone who is self-represented ask if he or she needs any help. Expanding my horizons and giving back have proved to be worthwhile and rewarding experiences for me.

You may be surprised by the mental, professional and intellectual growth these experiences offer. You may be even more surprised how these qualities can be an asset to your practice. A bonus for your client is that it may make you a better family lawyer and improve on the public perception of the profession. ■



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