

The Ideal Collaborative Partner: A Tribute to Jana Singer

Jane C. Murphy

Follow this and additional works at: <https://digitalcommons.law.umaryland.edu/mlr>



Part of the [Legal Education Commons](#), and the [Legal Profession Commons](#)

Recommended Citation

79 Md. L. Rev. 702 (2019)

This Tribute is brought to you for free and open access by the Academic Journals at DigitalCommons@UM Carey Law. It has been accepted for inclusion in Maryland Law Review by an authorized editor of DigitalCommons@UM Carey Law. For more information, please contact smccarty@law.umaryland.edu.

**THE IDEAL COLLABORATIVE PARTNER:
A TRIBUTE TO JANA SINGER**

JANE C. MURPHY*

Collaboration has been defined as a “pervasive, long-term relationship in which participants recognize common goals and objectives, share more tasks, and participate in extensive planning and implementation.”¹ I feel most fortunate to have had a collaborative partnership with Jana Singer for almost three decades. I am fortunate because such relationships are uncommon among legal scholars, given the “individualistic culture” of law schools and law professors.² Even more unusual, I found in Jana a scholarly partner with all the qualities of the ideal collaborator: strong intellect, enthusiasm, curiosity, generosity, and humility. Since the early days of our academic careers, Jana and I have shared ideas about family law that have informed our teaching, scholarship, and service. This collaboration has led to co-authoring law review articles, blog posts and, most importantly, two books. In this Essay, I will focus on our scholarly collaboration and explore the connections between that scholarship and Jana’s significant public service that has improved family law practice on both a local and national level.

In our early years as faculty at Maryland’s two law schools, Jana and I met regularly to discuss family law issues. We initially approached issues of family law reform from distinctly different perspectives and experiences. While I eventually taught doctrinal Family Law courses, my early teaching at the University of Baltimore School of Law focused exclusively on clinical courses in family law and dispute resolution. I was engaged in helping my students apply theory to practice and understand the impact of the law on low-income families. Similarly, my scholarship often examined issues of access to justice for poor women and children.³

© 2019 Jane C. Murphy.

* Laurence M. Katz Professor of Law, University of Baltimore School of Law.

1. THE COLLABORATIVE IMPERATIVE: LIBRARIANS AND FACULTY WORKING TOGETHER IN THE INFORMATION UNIVERSE 5 (Richard Raspa & Dane Ward eds. 2000).

2. Michael I. Meyerson, *Law School Culture and the Lost Art of Collaboration: Why Don’t Law Professors Play Well With Others?*, 93 NEB. L. REV. 547, 553 (2015) (demonstrating the low rate of collaboration among law professors in law reviews); see also Tracey E. George & Chris Guthrie, *Joining Forces: The Role of Collaboration in the Development of Legal Thought*, 52 J. LEGAL EDUC. 559, 572 (2002) (“The best available evidence suggests that collaborative legal scholarship will remain a bit player in legal academia.”). But see Tom Ginsburg & Thomas J. Miles, *Empiricism and the Rising Incidence of Coauthorship in Law*, 2011 U. ILL. L. REV. 1785 (2011).

3. See, e.g., Jane C. Murphy, *Lawyering for Social Change: The Power of the Narrative in Domestic Violence Law Reform*, 21 HOFSTRA L. REV. 1243 (1993).

Jana, on the other hand, was more focused on theory as both a Constitutional and Family Law scholar and teacher. Her early scholarship focused on the big picture, often identifying broad trends in family law, situating them in a larger context and relating them to doctrinal and jurisprudential developments of other areas.⁴ For a number of reasons, Jana might have assumed the role of mentor to me as the less experienced scholar. But, from our earliest conversations, she demonstrated the curiosity and humility that have consistently contributed to her strengths as a scholar and reformer. Our conversations were stimulating, sometimes challenging, exchanges in which Jana raised questions to test her theories against my experience on the ground. We shared a common scholarly interest in standards governing child access decisions, domestic violence, and the gender impact of family law. But it was the issues arising from the growing privatization of family law—a trend Jana identified as early as 1992—that ultimately led to our scholarly collaboration.

In her often-cited piece, *The Privatization of Family Law*, Jana analyzed the ways in which “private norm creation and private decision making have supplanted state-imposed rules and structures for governing family-related behavior.”⁵ This led to our discussions about the historical antecedents of this trend, its scope, its impact on families, and the ways in which privatization was playing out in our courts in Maryland. We both saw promise in the movement toward privacy and individual autonomy in family relations but also raised concerns about this trend. Jana focused initially on the impact of this trend on women,⁶ while I examined its impact on poor families.⁷

After exploring these issues separately, we had the opportunity to thoroughly delve into the scholarship on family conflict when we co-edited *Resolving Family Disputes*.⁸ In that book, we began our long-term exploration of an aspect of privatization that had not been fully examined by others—the processes governing family dispute resolution. We organized the book around what we described as “a paradigm shift in the way that most family

4. For example, in *The Privatization of Family Law*, Jana connected the rise of private decision making in family conflicts with other legal phenomena including,

the migration from constitutional to family law of liberal notions of privacy and individual autonomy; the rejection of traditional gender roles and the push for formal gender equality; the rise of law and economics analysis and the application of economic thinking to the family; and the increased dissociation of law and morality in the family context.

Jana B. Singer, *The Privatization of Family Law*, 1992 WIS. L. REV. 1443, 1446 (1992).

5. *Id.* at 1444.

6. See, e.g., Jana B. Singer, *Alimony and Efficiency: The Gendered Costs and Benefits of the Economic Justification for Alimony*, 82 GEO. L.J. 2423 (1994).

7. See, e.g., Jane C. Murphy, *Access to Legal Remedies: The Crisis in Family Law*, 8 BYU J. PUB. L. 123 (1993).

8. RESOLVING FAMILY CONFLICTS (Jana B. Singer & Jane C. Murphy eds., 2008).

legal conflicts are resolved.”⁹ We identified several elements of this paradigm shift: rejection of adversary procedures, recharacterization of family disputes as social and emotional processes, a move from backward looking adjudication to forward looking intervention, and an increased emphasis on capacity building in families and pre-dispute planning.¹⁰ We explored these elements through others’ scholarship and included our own tentative analysis, noting both the promise of this shift for healthier family conflict resolution along with “[s]ome [c]autious [n]otes” about the increasing reliance on non-legal players and informal, private processes.¹¹

Having compiled the work of others into a cohesive narrative around these elements, Jana and I felt ready to take on a book length project exploring our own analysis of this paradigm shift. In our 2015 book, *Divorced from Reality: Rethinking Family Dispute Resolution*, we examined the paradigm shift described in the earlier book and juxtaposed it with more recent changes in the structure and composition of today’s families.¹² The central question of the book is “whether the current dispute resolution regime responds adequately to the needs of the families it purports to serve.”¹³ We concluded the answer was a “qualified no.”¹⁴ Acknowledging the improvements the new paradigm had made over its adversary predecessor, our central critique is that the current system

is built largely around the model of a divorcing nuclear family—a model that fits poorly with the more complicated realities of today’s disputing families. . . . As a result, a majority of today’s disputing families must navigate a complicated and tiered judicial system without adequate access to legal information or advice—a state of affairs that jeopardizes the ability of today’s dispute resolution regime to achieve durable or just results for many families, particularly families without substantial means.¹⁵

We concluded with a range of recommendations designed to address these shortcomings, including recommendations designed to shift families and services from courts to communities.¹⁶

The book was well received and, I believe, makes an important contribution to the literature about the family justice system. I am proud of the

9. *Id.* at xiii.

10. *Id.* at xiii–xvii.

11. *Id.* at xix.

12. JANE C. MURPHY & JANA B. SINGER, *DIVORCED FROM REALITY: RETHINKING FAMILY DISPUTE RESOLUTION* (2015).

13. *Id.* at 1.

14. *Id.*

15. *Id.* at 1–2.

16. *Id.* at 128–55.

final product but perhaps even more proud of the process Jana and I followed in writing it together. It is often said that one of the advantages of collaboration is that “it allows for an efficient division of labor.”¹⁷ Collaborators often divide the work according to each collaborator’s interest and expertise. Jana and I approached the work that way initially—each writing a first draft of a chapter. But that was just the beginning of the writing process. We would exchange our draft chapters and then engage in an extensive feedback and rewrite process that resulted in a book in which every chapter was truly co-written.

Our goal was not to reduce individual labor or even achieve efficiency; we wanted to write a book that reflected the many rigorous debates and insights we had gained during years of conversation. Many of those insights came during the writing of this book. For example, after finishing the first chapter in which we thoroughly analyzed the history of American family dispute resolution from colonial times to the present, we were both surprised that the lines we had always drawn between developments in family law doctrine and family law process were not as clear as we thought; changes in family law doctrine often led to changes in process. Similarly, the clear boundaries we perceived between “public” and “private”¹⁸ family law had really shifted over time. My own cynicism about the potential for positive change from my years of clinical practice in urban family courts was tempered and changed by Jana’s insights about successful international models of family dispute resolution. Jana’s faith in the “new”¹⁹ family courts was informed by my knowledge of the impact such courts often have on poor families. As I noted in the acknowledgments in the book, “Both authors’ views were enriched and changed by the process of writing this book.”²⁰

Divorced from Reality also allowed Jana and me to collaborate on nearly a dozen presentations to law faculty, students, and practitioners around the

17. John Hudson, *Trends in Multi-Authored Papers in Economics*, 10 J. ECON. PERSP. 153, 157 (1996).

18. The term “public” family law refers to disputes involving the state, such as child abuse and neglect, while “private” family law refers to conflicts between private parties, such as divorce and custody. MURPHY & SINGER, *supra* note 12, at 24.

19. *Id.* at 16–19 (tracking the close similarities between the twenty-first-century family court and earlier reform movements).

20. *Id.* at vii.

country. We also shared our ideas from the book in new formats, participating in webinars²¹ and writing together for the first time on legal blogs²² and online journals.²³

Our extended exploration of the family dispute resolution processes also overlapped with Jana's substantial record of public service dedicated to improving the family justice system. Some service was national in scope like her longstanding membership and support of the Association of Family and Conciliation Courts, including service on the Editorial Board of its *Family Court Review* from 2002 to the present. She became a member of the American Law Institute²⁴ at a critical time when that organization was embarked on its first comprehensive work in the field of family law. The result of that work, the *Principles of the Law of Family Dissolution*, offered a legal framework for family dispute resolution that included a number of the developments we later evaluated in both our books: family mediation, parenting plans, and standards and procedures for allocating custodial and decision making responsibility for children.²⁵ Jana's role as part of the Members Consultative Group for this project encouraged us to bring these ideas to the Baltimore courts through a series of annual symposia, which were a joint effort of family law faculty at Maryland's two law schools and the judges and staff of the Circuit Court for Baltimore City.

Jana was also a board member and later President of the Divorce Roundtable of Montgomery County, a non-profit organization dedicated to ensuring that the best interests of children are served in the separation and divorce process.²⁶ Consistent with Jana's approach to family law scholarship and practice, the founders of Divorce Roundtable were committed to bring-

21. *Family Dispute Resolution and Family Violence*, BATTERED WOMEN'S JUST. PROJECT (Dec. 3, 2015) (on file with author).

22. Jane C. Murphy & Jana Singer, *The Many Options Available to Resolve the Brangelina Family Breakup*, CONCURRING OPINIONS (Sept. 30, 2016), <https://concurringopinions.com/archives/2016/09/the-many-options-to-resolve-the-brangelina-family-break-up.html>.

23. Jane C. Murphy & Jana B. Singer, *Moving Family Dispute Resolution from the Court System to the Community*, 75 MD. L. REV. ENDNOTES 9 (2016).

24. The American Law Institute is an organization of law scholars, lawyers, and judges with a mission

“to promote the clarification and simplification of the law and its better adaptation to social needs, to secure the better administration of justice, and to encourage and carry on scholarly and scientific legal work.” It achieves this goal through the development of Institute projects, which are categorized as Restatements, Codes, or Principles.

How the Institute Works, AM. L. INST., <https://www.ali.org/about-ali/how-institute-works/> (last visited Feb. 27, 2019).

25. PRINCIPLES OF THE LAW OF FAMILY DISSOLUTION: ANALYSIS AND RECOMMENDATIONS (AM. LAW INST. 2002).

26. DIVORCE ROUNDTABLE OF MONTGOMERY COUNTY, <http://www.divorceroundtable.org/> (last visited Feb. 7, 2019).

ing together “a deliberately balanced multi-disciplinary cross section of experienced Montgomery County mental health professionals, court personnel, social workers, mediators, and lawyers.”²⁷ Since its founding in 2008, the Roundtable has launched several court projects, including co-parenting education and court sponsored mediation. It has also been an important voice before the legislature and in the education of judges, lawyers, and other professionals involved with the children of divorce.

Finally, Jana’s role in creating and sustaining the Collaborative Project of Maryland (“CPM”) was critical in bringing this innovative family dispute resolution approach to low income families in Maryland.²⁸ Collaborative practice, with its emphasis on lawyers and other experts, had been largely unavailable to poor families. The CPM connects pro bono lawyers, mental health professionals, and financial experts with low-income families involved in separation and divorce.²⁹ As I’ve written elsewhere, CPM created unique and important learning opportunities for law students in my clinical program and, more importantly, brought resources to the divorcing families we served that strengthened rather than weakened these families.³⁰

Jana brought the same qualities to her service on both the Roundtable and CPM boards that she brought to her scholarship. As one of Jana’s fellow Roundtable and CPM Board members (and former student) Suzy Eckstein recently described Jana’s role:

When Jana is present at a board meeting the tone of the room shifts. Her ability to be humble, unpretentious (despite her educational background and accomplishments) has everyone in the room interested in hearing her perspective. When leading as President of the Divorce Roundtable, or as a board member for CPM, she had the ability to make everyone feel included and heard. Even when passionate about her point of view, she genuinely seemed interested in hearing and discussing opposing viewpoints. She enriches every discussion by sharing ideas that are carefully thought

27. *Id.*

28. Collaborative practice is an approach to dispute resolution that “embodies many of the client centered, interest based negotiation principles that are at the core of the mediation process. The primary difference is that lawyers are central to the collaborative process working with clients to create agreements outside of court.” JANE C. MURPHY & ROBERT RUBINSON, *FAMILY MEDIATION: THEORY AND PRACTICE* 231 (2d ed. 2015).

29. *About the Collaborative Project of Maryland*, COLLABORATIVE PROJECT OF MD., <https://collaborativeprojectmd.org/about/> (last visited Feb. 27, 2019).

30. Jane Murphy & Ashley Jones, *The Promise of Collaborative Practice for Low-Income Families*, MCPC NEWSLETTER (Md. Collaborative Practice Council), Mar. 2015, at 3–4.

through, while remaining open to shifting her ideas. This has allowed both boards to move forward on projects because everyone felt free to be creative to find the best solutions for any project.³¹

In retirement, I know Jana will continue to serve these and other organizations with her characteristic grace and hard work. Her important body of scholarship will continue to illuminate and teach students and scholars. I join her faculty colleagues and former students in thanking her for sharing her enormous gifts with us.

31. Email from Suzy Eckstein, Partner, Oakley & Eckstein, to Jane Murphy, Laurence M. Katz Professor of Law, Univ. of Balt. Sch. of Law (Feb. 5, 2019) (on file with author).