

20

year in review

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A Letter from Cyrus Mehri

It is my privilege to share our 2021 Year in Review, a year when both the firm and our clients showed remarkable resilience.

Our team worked to strengthen the firm. We engaged all team members in a new strategic planning process. We enhanced our already strong workplace culture with an external cultural review by [The Melanin Collective](#). And we moved to a new D.C. office that better suits our needs in a world transformed by the pandemic.

We continued to achieve results. After more than a decade of hard-fought litigation that went to the Supreme Court and back, teaming with other co-counsel, Mehri & Skalet helped achieve a result of over \$66 million on behalf of bank ATM consumers. Along with co-counsel, we completed a case on behalf of Farmers Insurance auto policy holders in California, creating a \$15 million fund and securing injunctive relief that will save consumers tens of millions of dollars annually. We resolved numerous complex severance agreements for senior executives in transition, including executives facing race and/or gender discrimination at the highest levels of corporate America. We won a rare race discrimination victory in the U.S. Court of Appeals that clarified the applicability of class action rules.

On behalf of public school districts, we emerged as national leaders in the sprawling opioid industry litigation. The school districts we represent are drawing attention to the opioid epidemic's impact on children, particularly children with prenatal exposure and children from homes disrupted by addiction or death, who need special education or other educational support at school. M&S took the lead in negotiating the creation of a Public School District Special Education Trust in the Purdue and Mallinckrodt opioid company bankruptcies, totaling over \$30 million that will provide abatement monies for school districts. U.S. District Judge Charles Breyer appointed me to serve on the Plaintiffs' Steering Committee to represent public school districts in the case against the consulting company, McKinsey, which was at the hub of the civil conspiracy turbocharging marketing of opioids in the United States.

M&S Of Counsel retired federal judge U.W. Clemon, M&S partner Josh Karsh, and I penned [an article](#) in the Atlantic in 2020 about the nation's first civil rights statute, 42 U.S.C. § 1981. In 2021, inspired by the article, Senators Richard Blumenthal, Cory Booker, and Ron Wyden, along with Representatives Jamie Raskin and Mondaire Jones, introduced the Economic Inclusion Civil Rights Act of 2021, a bill to revitalize Section 1981 to eliminate discrimination based on race or ethnicity in the marketplace.

Finally, 2021 brought M&S a new associate, Autumn Clarke, who earned her stripes as a Peggy Browning Fellow at M&S while attending law school before bolstering our attorney ranks.

We entered 2022 with much on which to build our mission to achieve results and impact society.

Very truly yours,

Cyrus Mehri



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Wall Street Journal “The Future of Everything” profile on Cyrus Mehri and workplace diversity

242

articles mentioning M&S attorneys or the firm

1,105

articles mentioning Fritz Pollard Alliance, co-founded by Cyrus Mehri

1981

Section 1981 advocacy to strengthen nation’s first civil rights law

2000

K STREET NW

our new address

4,245

articles mentioning the Rooney Rule

17,060

visits to M&S’s website

OVER

\$2 million

in severance packages negotiated for our clients in 2021

\$25.5 million

in settlement secured against Purdue Pharma

1.16 billion

the number of people who had the opportunity to read stories mentioning the firm

in numbers

New Face in a New Place

Autumn Clarke joined **Mehri & Skalet** in September 2021 as an Associate Attorney. Ms. Clarke works on class action matters pertaining to civil rights, consumer protection, employment discrimination, as well as whistleblower rights. Prior to this position, Ms. Clarke was the Peggy Browning Fund Fellow and Summer Associate at M&S in 2020.



Originally hailing from Yonkers, New York, Ms. Clarke received her Bachelor of Arts degree in Political Science from American University (AU). While at AU, she became a student activist and promoted community relationships by co-founding a mentorship program for women of color. During her undergraduate career, Ms. Clarke interned at the U.S. Department of Education, where she worked on projects relating to distance education, Every Student Succeeds Act implementation and guidance, and President Obama’s My Brother’s Keeper. Ms. Clarke is a proud alumna of the Congressional Black Caucus Foundation’s Emerging Leaders program, where she served as a legislative intern in the Office of Congresswoman Eleanor Holmes Norton. While there, she served as a critical team member and proposed legislation (H.R. 6687) addressing bias in schools. Ms. Clarke also interned at the Embassy of Australia while at AU and studied abroad at the University of Melbourne. After graduation, Ms. Clarke worked at the Brookings Institution, where she helped coordinate leadership and policy programs for two years before going to law school.

I am proud to be a part of the M&S team, working alongside the most incredible attorneys who work relentlessly to achieve justice for our clients.

— AUTUMN CLARKE

In 2021, Ms. Clarke graduated from American University Washington College of Law (WCL).

At WCL, Ms. Clarke served as the Executive Communications & Development Editor for the Administrative Law Review. She worked as a student attorney in the Civil Advocacy Clinic, where she represented low-wage workers in wage theft cases against exploitative employers. During law school, Ms. Clarke was elected the Vice President of the Black Law Students Association (BLSA) at WCL, which under her leadership won the “Chapter of the Year” award. She went on to serve as the Member-at-Large and the National Director for the Nelson Mandela International Negotiations Competition for the National Board of Directors of BLSA. While in law school, Ms. Clarke also interned for the Montgomery County, MD Circuit Court and the Lawyers’ Committee for Civil Rights Under Law.

Ms. Clarke is a member of the Maryland Bar.

M&S Has Opinions

M&S Senior Associate Ezra Bronstein published an [article](#) in Bloomberg Law examining how the SEC’s whistleblower program allows for potentially more significant bounties than the Treasury’s program for whistleblowers of money laundering. Building on his experience directing the Federal Housing Finance Agency Office of Inspector General’s whistleblower operations, Mr. Bronstein explains that “potential whistleblowers, particularly well-paid financial professionals, seriously risk their professional and personal lives by speaking up in the face of misconduct” yet “are indispensable for law enforcement.” Mr. Bronstein suggests that the Treasury program’s weak structure undermines its potential to strengthen industry compliance with anti-money laundering laws.

As a workaround, he explains how a recent SEC win against a penny-stock broker provides whistleblowers of money laundering a guide map to benefit from the SEC’s more generous program.

In an [opinion piece](#) published in March 2021, M&S partner Cyrus Mehri highlighted the prevalence of race discrimination within the reality show *The Bachelor*. Mr. Mehri shared a first-hand account of his time on the show’s set while taking depositions as part of a lawsuit in 2012. During a tour, a staff member showed him a wall filled with portraits of former contestants from all over the U.S. Mr. Mehri noted that “every contestant appeared white,” contrary to the racial and ethnic diversity of the United States. In his piece, Mr. Mehri outlined recommendations for the franchise to promote inclusivity. These included an emphasis on casting diverse contestants, encouraging open dialogue about race, and — above all — a zero-tolerance policy for racist conduct on and off-camera.

To be competitive and innovative all organizations must seek to be inclusive and champions of equal opportunity and let the best rise to the top. Ratings will go up, not down, when reflecting all of America.



Norflet Progress Fund board members. From left to right: Theodore M. Shaw, Lee-Ann Foster Brady, John Brittain, Deidra Ierardi, Geraldine Sumter, and the Honorable Nathaniel R. Jones

M&S and Racial Justice

Cook County Jail Race Discrimination

Mehri & Skalet continues to fight race discrimination in hiring at the Cook County Jail. Recently, the U.S. Court of Appeals for the Seventh Circuit held that the district court erred by denying class certification in a racial discrimination hiring case against the Cook County Sheriff's Office. If the district court now certifies the three proposed classes, this will be the first class action, of which M&S is aware, that challenges three different steps in an employer's hiring process.

Desegregation

In probably the longest-running case in the federal court system, the district court agreed with M&S Of Counsel U.W. Clemon to make the city of Gardendale in Alabama a co-defendant with the Gardendale Board of Education as defendants that connived to resist efforts to desegregate the school system, potentially making the City as well as the Board liable for attorneys' fees and costs. The case is led by M&S Of Counsel, retired federal judge U.W. Clemon.

New York City Fire Protection Inspectors

In a racial discrimination case on behalf of fire protection inspectors (FPIs), the district court denied a motion to dismiss this atypical class action claiming that New York City discriminatorily pays FPIs less than building inspectors who perform similar work due to the fact that FPIs have a substantially higher percentage of racial minorities. The judge initially denied the claim for white FPIs as well, but granted M&S leave to file an amended complaint, and a new motion to dismiss is pending.

Norflet Progress Fund

M&S, with co-counsel Klafter Lesser LLP, published a [report](#) highlighting the achievements of the Norflet Progress Fund. The Fund was established using settlement money secured in a class action against John Hancock Life Insurance Company for discriminating against Black Americans in its insurance offerings. After distributing a portion of the total \$24 million to class members, approximately \$16 million was dedicated to the Fund. Named after the lead plaintiff, Ms. Merle Norflet, the Fund awarded grants to numerous non-profits serving Black communities across the United States and [was praised](#) as a successful racial justice initiative. In the words of M&S partner Cyrus Mehri, the Norflet Progress Fund is "a rare example of righting a historic wrong."

Because of Merle and Pearl's care and keen attention, dozens of Black homeowners in the South would finally get the money owed to them for repairs following natural disasters, Black toddlers in New York City would be afforded an early education rich in African American history and culture, and teenagers in Washington, D.C., would spend Saturdays cleaning local rivers.

— THE NORFLET PROGRESS FUND
AND THE FUTURE OF CY PRES PRACTICE

M&S and #MeToo

Cook County Jail Sexual Harassment

When women employees of Cook County Jail learned their class action suit could not proceed after the U.S. Court of Appeals for the Seventh Circuit decertified the class, hundreds stood up and joined the case individually. About 540 women joined the lawsuit, making it one of the largest individual-plaintiff sexual harassment cases ever. The women who work at the Jail will not be deterred by the County's procedural attempts to block their rights. They demand an end to the harassment and systemic action to prevent the epidemic of harassment from recurring.



At a press conference in July 2021, former correctional officers shared their experiences of egregious sexual harassment during the time they worked at the Cook County Jail in Chicago. At the podium: Bonnie Parker. From left to right: Marni Willenson, Barbara Unseld, Caryn Lederer.



M&S and Disability Rights

D.C. Metropolitan Police Department Disability Discrimination

The district court partially denied a motion to dismiss a claim that D.C.'s police department violated the Americans with Disabilities Act by terminating the employment of any officer who could not return to normal duties after 172 days of leave. Discovery is proceeding in the case.

M&S and Opioid Litigation

Representing public school districts in opioid litigation, Mehri & Skalet led the negotiations in establishing the Public School District Special Education Trust. The trust is financed with \$30.5 million from bankruptcies filed by Purdue and Mallinckrodt, two pharmaceutical companies largely responsible for the opioid epidemic. The epidemic is taking its toll on many children, who now have learning disabilities stemming from exposure to opioids *in utero*, as well as psychological trauma from losing family to opioid addiction. Grant funding from the Trust will enable public schools to afford special education and other necessary services, which would otherwise be prohibitively expensive. In a separate case, M&S partner Cyrus Mehri was appointed to participate in a 10-member plaintiffs' steering committee on behalf of school districts harmed by McKinsey's actions in marketing opioids.



M&S and Consumer Protection



Photo by Jake Allen

ATM Antitrust Litigation

After an antitrust battle with the big banks that lasted over a decade, in a case that went all the way up to the United States Supreme Court and back, Mehri & Skalet is part of the legal team that achieved a \$66.7 million settlement on behalf of ATM bank consumers hit with excessive surcharges. The amount achieved is 57% of the maximum single damages. The settlement is subject to court approval.

Medical Records Overcharge

M&S is lead counsel in two cases involving hospitals in Maryland and D.C. The cases allege hospital administrations and contractors overcharged patients and their representatives to access their medical records. After successfully settling the D.C. case, qualifying class members that filed claims were reimbursed based on the terms of the approved settlement agreement in 2021. The trial court in the Maryland case denied class certification on remand.



Collaboration with Working IDEAL

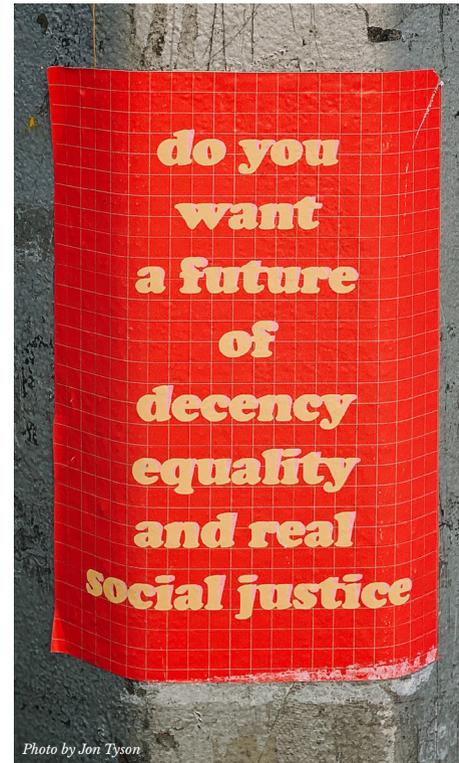
Working IDEAL is a consulting firm co-founded by Mehri & Skalet alum Pamela Coukos and Cyrus Mehri. Working IDEAL specializes in diversity, equity, and inclusion (DEI) assessments, workplace or college harassment response, pay equity analysis, leadership development, employee learning and engagement, and strategic diversity planning. Together with Working IDEAL, M&S offers clients deep experience with law, data analysis, applied social science literature, training and development, and public engagement.

In 2021, M&S collaborated with Working IDEAL on several projects to advance equity and justice:

- **Strengthening Non-Profit DEI Capacity:** Working IDEAL conducted an analysis of DEI capacity and needs of grantees for the Democracy Fund, a foundation that supports projects related to open political systems, and M&S attorneys Ellen Eardley and Desireé Langley provided coaching and development to grantee leaders.
- **Strengthening DEI in Local Governments:** M&S attorneys collaborated with a Working IDEAL team that completed a deep, multi-year engagement with the City of Cambridge, Massachusetts, conducting an independent external assessment of recruitment, hiring, and promotion through a diversity, equity, and inclusion lens. Through a survey of all City employees, analysis of workforce data and interviews and documents, the team evaluated the City's structure, practices, policies, and culture. The recommendations, featured in a [publicly-available report](#), included strategic outreach, building relationships, strengthening tools and resources, leveraging the current workforce and city residents, and better utilizing technology.
- **Strengthening Equity & Inclusion in Tech:** A Working IDEAL team that included M&S attorneys partnered with Atlassian to provide resources and ideas to improve experiences for Atlassians from underrepresented groups and apply research on increasing equity and inclusion in the tech industry.

In addition to our partnership with Working IDEAL, M&S provides legal consulting services directly to clients.

- **Strengthening Equity and Inclusion on Campus:** M&S partner Ellen Eardley provided strategic advice to a mid-sized, public university seeking to align its DEI goals with best practices for investigations of allegations of discrimination and retaliation by faculty, staff, and students. M&S conducted interviews, facilitated group discussions, engaged in leadership development and coaching, and made written recommendations for improving institutional policies.



Working IDEAL provides trusted, effective and innovative advice on inclusive workplaces, diverse talent and fair pay to large and small companies, universities, non-profits, unions and other organizations across the nation.

M&S and Whistleblower Rights

In 2021, Mehri & Skalet's Whistleblower Rights practice continued to build upon the successes achieved in 2020, which was highlighted by the largest procurement fraud settlement of that year – a \$57.75 million settlement that resolved a False Claims Act lawsuit brought by four M&S whistleblower clients working for government contractors at the Hanford Site, the largest U.S. nuclear waste treatment facility.

Following that settlement, the practice took advantage of a variety of speaking opportunities to discuss the case and our other work on behalf of courageous whistleblowers who are fighting fraud and seeking protection from retaliation. For example, practice Co-Chair, Cleveland Lawrence III, was interviewed by Taxpayers Against Fraud for an episode of the “Fraud in America” podcast that featured the Hanford settlement. Co-chair Richard Condit joined panel discussions focusing on whistleblower retaliation issues – as faculty of the Whistleblowers of America Working Practice Institute Conference and as a moderator during the 2021 TAF conference. Mr. Lawrence was a contributor to an American Business Law Journal paper recommending a variety of whistleblower-friendly revisions to the SEC whistleblower program, and Senior Associate Ezra Bronstein penned an article for Bloomberg discussing the limitations of the whistleblower provisions of the new Anti-Money Laundering whistleblower program.

Many individuals retained M&S last year for new filings under the False Claims Act and the Dodd-Frank whistleblower programs. Several other client matters are still being investigated and prepared for filing in 2022, while multiple cases already on file are set to be resolved this year.

One whistleblower case that received [widespread attention](#) last year is that of [Dr. Michael Salvana](#). The M&S whistleblower team is representing Dr. Salvana against the New York State Department of Corrections & Community Supervision (DOCCS). While employed at a prison medical facility, Dr. Salvana opposed DOCCS' Medications with Abuse Potential (MWAP) policy, a policy that denied incarcerated patients access to almost all types of pain medication. Dr. Salvana found this policy inhumane and spoke out to secure proper medical care for his patients. As a result, he was retaliated against, and ultimately forced to resign. M&S is proud to represent Dr. Salvana in his whistleblower suit and fight for humane treatment of incarcerated patients.

The Whistleblower Rights Practice continues to grow. M&S is excited to continue our important work with current clients and look forward to opportunities to assist new clients in their pursuits of justice.

Potential whistleblowers, particularly well-paid financial professionals, seriously risk their professional and personal lives by speaking up in the face of misconduct” yet “are indispensable for law enforcement.

– EZRA BRONSTEIN, BLOOMBERG



M&S and Insurance Litigation

Price Optimization Cases

In 2021, **Jay Angoff**, along with co-counsel, continued to litigate two price optimization cases against Allstate, one in California and one in Illinois. Under state law and in accordance with actuarial standards, insurers are required to set their rates based on the risk presented by the policyholder. Price optimization is a practice that considers a policyholder's willingness to tolerate a price increase – not just the risk that he or she presents – in determining how much to charge. Plaintiffs allege that Allstate has considered, and continues to consider, its policyholders' willingness to pay in both California and Illinois in two different ways.

Mr. Angoff also served as an expert witness in 2021. One case involved surplus held by a non-profit health insurer that appeared to exceed the level necessary to protect policyholders. Another involved a non-profit auto insurer that refused to pay commissions to its agents that it was contractually required to pay.



USAA

Mehri & Skalet, along with co-counsel Consumer Watchdog and Mason Lietz & Klinger LLP, filed a lawsuit in the Southern District of California against USAA and one of its subsidiaries in February 2021 on behalf of two named plaintiffs and a proposed class currently estimated to consist of over 150,000 policyholders. The plaintiffs and proposed class members are, or were, enlistees as opposed to officers in the military. Plaintiffs allege that USAA charges enlisted personnel more than officers who are identically situated under the more than 20 factors that USAA takes into account in setting premiums.

Plaintiffs claim that the pricing disparities violate California law in two ways. First, California law requires that persons who meet the statutory definition of “good drivers” be offered the lowest-priced good driver policy available from a family of insurers. USAA violates this policy, plaintiffs contend, by offering enlisted personnel only good driver policies from its high-priced subsidiary. Second, California has two statutes that prohibit discrimination based on military status, one expressly and one through broader language. Plaintiffs claim that charging enlisted personnel more than identically situated officers, regardless of whether they qualify as “good drivers,” violates those laws.

According to lead counsel Mr. Angoff, “It is just as wrong to charge enlisted soldiers more than officers for insurance as it would be to charge one race of drivers more than another. This is especially true when the soldiers offered the more expensive policies are less able to afford expensive insurance than are officers.”

Judge Bencivengo denied USAA's motion to dismiss and then its motion to certify the issues for interlocutory appeal. The case is now in discovery looking toward motions for class certification and for summary judgment in 2022 and, if necessary, trial in 2023.

Aliera & Trinity Healthshare

M&S, along with co-counsel Sirianni Youtz Spoonemore Hamburger, Myers & Company, and a consortium of firms across the country, launched class action lawsuits against Aliera and Sharity Ministries (formerly known as Trinity Healthshare) for selling thousands of health plans nationwide that don't comply with state and federal law. The allegations include that the companies refused to pay claims for health benefits that would otherwise be covered under state and/or federal law, violated Consumer Protection Acts, and issued illegal policies and plans that fail to include certain required benefits.

Against the backdrop of the legal team's mounting legal victories in the various state cases and adverse findings by state insurance regulators, Sharity filed for bankruptcy in July 2021 in Delaware, leaving thousands of members without health insurance and with huge unpaid medical bills. There is no money left in Sharity to pay any outstanding medical bills, and it will be liquidated. As a result, members' remedies now lie in the bankruptcy proceeding. The Sharity Liquidating Trustee has since retained M&S and co-counsel in the class actions as its counsel.

In late 2021, after securing default judgments of more than \$25 million in federal courts in Washington and Kentucky, M&S and co-counsel began involuntary bankruptcy proceedings against Aliera in Delaware.

In early 2022, M&S and co-counsel defeated Aliera's complicated legal maneuvering in the bankruptcy process in Georgia.

The Aliera and Sharity bankruptcies are now consolidated and overseen by the Honorable John T. Dorsey, United States Bankruptcy Judge for the United States Bankruptcy Court for the District of Delaware. M&S and co-counsel continue to hold the companies accountable to those they defrauded.

The New York Times

AP

**LAST
WEEK
TONIGHT**
WITH JOHN OLIVER



Business Interruption Litigation

M&S, with co-counsel, filed class lawsuits against Society Insurance and Aspen Insurance for refusing to pay for COVID-19 related property losses. M&S hopes business interruption suits can provide a lifeline for small businesses.

Small businesses are suffering mightily from the pandemic. As the pandemic took hold, state and local governments forced “non-essential” businesses to close or cut back their operations because of the dangerous conditions. The government’s shutdown orders further limited the public’s access to these businesses, resulting in devastating financial losses to the economic backbone of our country.

Society Insurance and Aspen Insurance sell policies to businesses around the country. The lawsuits allege that the insurance company’s standard policies include coverage for lost income caused by coronavirus-related loss or property damage and government shutdown orders.

M&S filed the Society Insurance lawsuit on behalf of two Chicago blues venues and all other businesses that bought similar policies. The case has since been centralized into ongoing multi-district litigation proceedings in the U.S. District Court for the Northern District of Illinois.

The Aspen Insurance case was filed in federal court in Connecticut on behalf of a Washington, D.C. dentist and all other businesses that bought similar policies. The case is stayed pending a decision on a motion to dismiss.

Insurance Consulting

Mr. Angoff was also engaged in 2021 by two state plaintiff lawyer associations to produce reports on two insurance-related issues: one on the cost of increasing minimum auto insurance limits and the other on the condition of, and trends in, the medical malpractice insurance market.

In 2021, Mr. Angoff was once again retained by the Vermont Office of Healthcare Advocate to challenge the rate increases filed by Vermont’s two major health insurers before the Vermont health insurance regulator. The regulator ordered the rates filed by the carrier to be reduced substantially.



Words from Our Clients

It is clear M&S believes in the partnership model. Every step of the way, over an extended period of time, I always felt I had a partner in the process who walked that fine line between providing counsel, listening to my concerns and presenting multiple approaches for me to consider. We created a very pragmatic approach that, in the end, achieved my objectives.

—INDIVIDUAL SEVERANCE CLIENT

I've worked with over 15 law firms to date, and Mehri & Skalet attorneys have been the best listeners, the most responsive, detail oriented, time conscious, creative, and generous legal team that I have ever experienced. I can't thank them enough.

—WHISTLEBLOWER CLIENT

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