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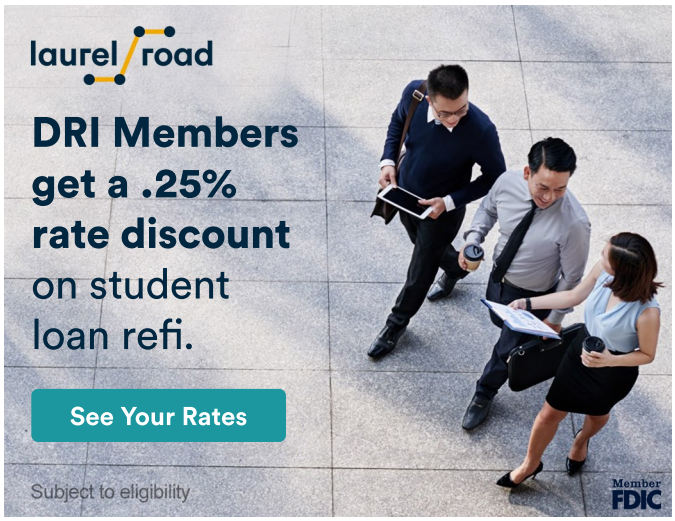

In This Issue

Feature Articles

Inclusion in Practice: Gender-Inclusive Legal Writing and Communications (or Why"Dear Sir or Madam" Must Go) 2

Being a Young Lawyer in the Age of Social Media 4

Articles of Note

The Fight to Stay in the Shadows
The Business of Litigation Funding 6

Are You Ready to Bring Your Career to the Center Stage in Nashville? 8

Leadership Note

The Chair's Corner
Be Cool, Be Kind 9

DRI Young Lawyers Member Spotlight

Gayatri Deodhar 10

Membership Minute

The Five Easy Steps to DRI Recruiting 11

Timeout for Wellness

Address the Stress: Using Yoga and Mindfulness to Reduce the Stress in Your Law Practice 12

News & Announcements

And The Defense Wins 13
Share Your "Wins" 13

Feature Articles

Inclusion in Practice: Gender-Inclusive Legal Writing and Communications (or Why"Dear Sir or Madam" Must Go)

By Erica A. Holzer, Allison E. Laffey, and Tom R. Pack



Diversity in the legal field is a worthy and long-sought goal. To that end, incoming classes of law firm associates have begun (just *begun*!) to narrow the gap between the legal field and the diversity of our communities, though there is much work left to be done on that front as well. But what happens when these diverse folks make it into our companies and law firms? Will they find an inclusive environment?

Inclusion is the harder, trickier, and more subjective concept. Diversity often looks at numbers and metrics. In contrast, inclusion requires welcoming, hearing, supporting, and empowering all people—particularly those of diverse backgrounds—to succeed. Inclusion creates space for folks to be themselves at work, instead of asking them to be like everyone else. If diversity efforts flow from talking the talk, then inclusion efforts are a real attempt to walk the walk.

As lawyers—who make a living from the use of language—using gender-inclusive language is a fundamental way to model inclusion. We should take an honest look at our writing and communication habits to determine whether they reflect a culture of inclusion in our firms and businesses.

Gender inclusion goes beyond using language that includes women or uses "he or she" when gender is unknown. Such language is typically only inclusive of cisgender people, *i.e.*, people whose biological sex and gender identity match, which represents just one point on the wide spectrum of sex and gender identity. The use of traditional pronouns, like she/her/hers and he/him/his, excludes the growing proportion of people—including judges, judicial clerks, opposing counsel, colleagues, and clients—who identify as outside the gender binary. People increasingly feel free to openly identify as transgender, or queer/genderqueer/nonbinary. These folks may use traditional pronouns, some may use they/them/theirs, and some may use other pronouns to identify themselves.

That may all sound personal, and complicated, and it certainly can be. Even so, in our experience, it largely comes down to practicing the Golden Rule and treating others as you would like to be treated. It is not necessary to comprehensively understand each and every person's gender identity and language preferences to be inclusive. No one can or should determine gender identity from outward appearances, nor should anyone guess or make assumptions. The goal is rather to write in a way that minimizes or eliminates gendered language, instead choosing language that is broadly inclusive of your entire potential audience. The following represents a practical, concrete step toward building an inclusive legal community—that is, inclusion in practice.

Inclusive Legal Communications: Be Thoughtful

"Dear Sir or Madam" must go. In fact, receiving correspondence with this outdated greeting was the impetus for this article. It is time to update our legal and business communications to include everyone in our legal community, rather than subtly excluding them.

First, the "sir" portion of this greeting is *always* first—not unlike the attempting-to-be-inclusive phrases "he or she" and "his or her." Automatically defaulting to male primacy in our language is not a coincidence. It reflects centuries of systematic gender oppression and ought to be challenged. Second, the term "madam" is antiquated and assumes or at least implies that a woman recipient is older and/or married. Thoughtful legal or business communications should not differentiate between women based on age or marital status—particularly when the equivalent for men, "sir," does no such thing. For the same reasons, the terms "Miss" and "Mrs." are problematic in legal communications, *unless* the recipient has expressly stated that is how they wish to be addressed.

If "Dear Sir or Madam" is inappropriate for modern communications, then what is the alternative when addressing an unknown recipient? "To Whom It May Concern" is inclusive but can be impersonal. One option is to use the title of the person you are addressing, *e.g.*, "Dear Clerk of Court" or "Dear Records Administrator." For known recipients, if you wish to include a courtesy title, search for an appropriate gender-neutral title, such as "Professor" or "Doctor," or consider using "Mx."—a gender inclusive alternative to

traditional courtesy titles—or review prior correspondence to ensure you can deduce the recipient's language preferences from that.

Inclusive Legal Writing: Be Creative

Gone (we hope) are the days when we ask what a "reasonable man" would have done, and have lengthy legal discussions filled solely with "he," "him," and "his" pronouns. But simply conducting a find-and-replace search to change "he" to "he or she," or to change "his" to "his or her" is insufficient, for the reasons articulated above, and because those phrases are inartful and clunky. We need more words. And if there ever was a group of people up to the task, it's lawyers.

Careful attention to gender-inclusive language in legal writing requires no more thought than careful attention to writing generally. In many cases, under-inclusive pronouns can simply be eliminated. Instead of writing "Mrs. Smith admits *X* in her deposition," write "Plaintiff admits" or "Plaintiff's sworn testimony is *X*." Instead of "the Trustee breached his duty of loyalty by . . ." you can write "the Trustee breached the duty of loyalty by . . . ."

If the sentence you are crafting requires a singular third-person pronoun, we suggest using "they," "them," and "their" in a singular form. While this may seem controversial in the legal field, other fields are well out in front of ours. Indeed, the use of a singular "they" has been prevalent in English for centuries, and appears in the writing of Shakespeare, Dickens, and others. In more recent history, the Associated Press Stylebook, the Chicago Manual of Style, the Washington Post Stylebook, the American Heritage Dictionary, and even several Oxford dictionaries all approve of the singular "they" when it is the subject's preference or a person's preference is unknown.

Inclusive Interpersonal Interactions: Be Considerate

Inclusion—particularly in your law firm or business—goes beyond formal communications and writing. Be aware that you cannot discern someone's gender identity and personal pronouns from appearance alone, so do not be shy about asking. Even if (and we would suggest *especially* if) you are cisgender, consider adding the personal pronouns you use to your email signature, so others are aware of your preference and can act accordingly. These types of actions take minimal effort and can have a profound impact on helping to normalize gender-inclusive communications of all types. Being intentional about inclusion in our language will result in more inclusive workplaces, and a more inclusive legal profession.

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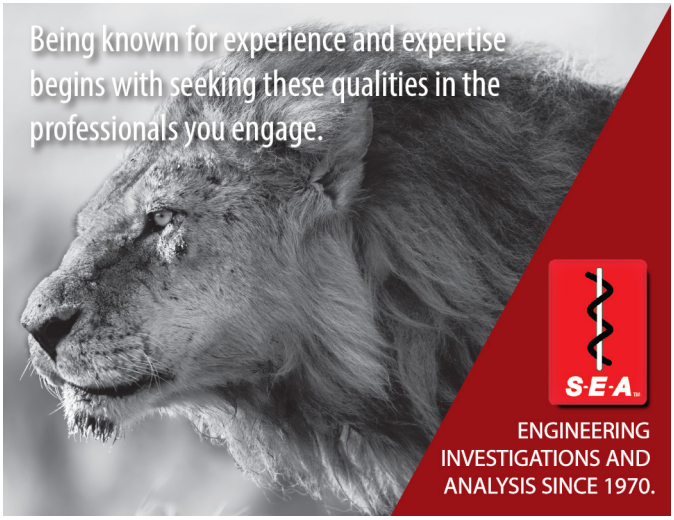

Being a Young Lawyer in the Age of Social Media

By Lon H. Johnson

As a young lawyer, I've noticed that my older colleagues tend to assume that I know quite a bit about social media. I suppose the expectation is fair. After all, I've had an active Facebook account my entire adult life. Given the expectations imposed upon me by my older colleagues (and non-lawyer friends), I've gone out of my way to learn a bit about social media in the law. While it may be a stretch to say that we, as young lawyers, should be well-versed in the legal framework surrounding social media platforms, the reality is that social media presents such new concerns that social media case law is consistently interesting. This article will outline four social media-related legal issues that, while perhaps not directly relevant to your practice, will at least bolster your millennial credentials with your older colleagues.

The rapid growth of social media platforms has caught many courts on their heels.

It does not take a lawyer to point out that long-settled free speech and privacy jurisprudence rarely provide courts with directly relevant precedent in modern lawsuits involving the interpretation of social media. Often, courts' attempts to draw an analogy fall so short that the results are borderline humorous. *See, e.g., United States v. Matish*, 193 F. Supp. 3d 585, 618–21 (E.D. Va. 2016) ("Just as Justice Breyer wrote in concurrence [in *Minnesota v. Carter*, 525 U.S. 83, 85, 119 S.Ct. 469, 142 L.Ed.2d 373 (1998)] that a police officer who peers through broken blinds does not violate anyone's Fourth Amendment rights, FBI agents who exploit a vulnerability in an online network do not violate the Fourth Amendment."); *Heldt v. Guardian Life Ins. Co. of Am.*, No. 16-CV-885-BAS-NLS, 2019 WL 651503, at *7 (S.D. Cal. Feb. 15, 2019) (comparing voluntarily shared information on Facebook to the unprotected "telephone numbers one dials" from the Supreme Court's 1979 *Smith v. Maryland* decision.)

Thankfully, courts appear to have largely respected the principle that they should not take hard positions on poorly understood social phenomena, seemingly following the mantra of the Supreme Court in its 2010 *City of Ontario v. Quon* decision: "The Court must proceed with care when considering the whole concept of privacy expectations in communications made on electronic equipment owned by a government employer. The judiciary risks error by elaborating too fully on the Fourth Amendment implications of emerging technology before its role in society has become clear." 560 U.S. 746, 759, 130 S.Ct. 2619, 177 L.Ed.2d 216 (2010). For better or worse, courts have been hesitant to challenge the status quo when it comes to how platforms are regulated. This hesitance makes the United States' Supreme Court's upcoming *Manhattan Community Access Corp. v. Halleck* decision— a case that might take us closer to a world where social media platforms are treated as quasi-governmental entities—all the more interesting.

While social media platforms have largely been protected from the consequences of their user-generated content by the Communications Decency Act of 1996, that may not always be the case.

In 2019, the Supreme Court will decide *Manhattan Community Access Corp. v. Halleck*, a decision which seems certain to contain its fair share of questionable analogizing. Superficially, *MCA v. Halleck* is about whether a private operator of a public access television network should be considered a "state actor," thereby rendering it vulnerable to First Amendment-based litigation. However, the case could have far broader implications. If a private operator of a television network is a state actor, what about Facebook or Twitter? Indeed, it is conceivable that the Court's decision may have a significant impact on the scope of social media platforms' control over their "own" content.

The case is particularly timely given the public perception of social media companies—periodically stoked by various political figures—as politically liberal institutions. This perception has consistently led to allegations of political bias in the way that social media companies control the way that content is produced, curated, and shared on their platforms. Currently, social media companies are generally not responsible for the content produced by their users, thanks to the statutory protections afforded by Section 230 of the Communications Decency Act (47 U.S.C. §230). *Manhattan Community* might change that.

Of course, this is not the Supreme Court's first foray into the regulation of social media, and it will certainly not be its last. In 2017, the Court decided *Packingham v. North Carolina*, No. 15-1194. In *Packingham*, the Court, in an 8–0 ruling, found that a North Carolina statute which made it

a felony for a registered sex offender "to access a commercial social networking Web site where the sex offender knows that the site permits minor children to become members or to create or maintain personal Web pages" impermissibly restricted lawful speech in violation of the First Amendment. In Justice Kennedy's opinion, the Court referred to social media platforms as a "modern public square." While the Court did little to tease out the scope of that analogy, *Packingham* suggests that the Court would be reticent to subject social media companies to anything like *Manhattan Community* commentators have suggested.

Even if the Court's Manhattan Community decision does not change whether social media companies can be held accountable for the content they produce (or the way they control how it is displayed), social media platforms that more than "passively" publish content may not be protected by Section 230.

In *Fair Housing Council of San Fernando Valley v. Roommates.com*, the Ninth Circuit held that the housing locator site, Roommates.com, was not immune under Section 230 of the Communications Decency Act because the site had developed questionnaires to elicit potentially discriminatory information from users, and therefore was more than a passive publisher of the content. 521 F.3d 1157, 1165 (9th Cir. 2008). The Court further supported its finding that the website was not subject to immunity because it categorized, channeled, and limited the distribution of users' profiles.

In *Nemet Chevrolet, Ltd. v. Consumeraffairs.com, Inc.*, the 4th Circuit further analyzed Section 230, and clarified that whether Section 230's protections apply to a platform turns on the degree the platform is involved in promoting an illegal activity. 591 F.3d 250, 257 (4th Cir. 2009). Furthermore, we know from the Ninth Circuit's *Barnes v. Yahoo!* decision that Section 230 provides no protection from a promissory estoppel claim. 570 F.3d 1096, 1106 (9th Cir. 2009), as amended (Sept. 28, 2009). If a social media platform promises to remove content, and does not, it may be held liable.

Courts have generally found that information posted to social media platforms is not protected by a valid expectation of privacy.

Courts have been hesitant to afford any expectation of privacy to voluntarily posted content on social media platforms. "[T]he act of posting information on an [online social network] that can be seen by others, even if the information is restricted, undercuts the expectation of privacy. Such reasoning is consistent with Facebook's privacy policy, which makes it clear that even if a user posts information on a private profile, that will not preclude a user's 'friend' from reposting the information elsewhere in cyberspace." *See, also*, *Palmieri v. United States*, 72 F.Supp.3d 191, 210 (D.D.C. 2014) (holding that "when a Facebook user allows 'friends' to view his information, the Government may access that information through an individual who is a 'friend' without violating the Fourth Amendment" because those friends " 'were free to use the information however they wanted—including sharing it with the Government' " (quoting *United States v. Meregildo*, 883 F.Supp.2d 523, 527 (S.D.N.Y. 2012)); *Meregildo*, 883 F.Supp.2d at 526 ("[Defendant's] legitimate expectation of privacy ended when he disseminated posts to his 'friends' because those 'friends' were free to use the information however they wanted—including sharing it with the Government.") In other words, regardless of whether you inadvertently add an undercover police officer as a "friend," information published online is not subject to privacy protection. However, Courts have held that privacy rights may extend to *inboxes* on social media platforms. *Crispin v. Christian Audigier, Inc.*, 717 F. Supp. 2d 965 (C.D. Cal. 2010).

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The Fight to Stay in the Shadows
The Business of Litigation Funding

By Allison Ng

If you are a litigator, it comes as no surprise that third-party litigation financing is a lucrative business. According to the *New York Times*, litigation finance is an estimated $10 billion industry, and it expects the industry to continue to grow. Matthew Goldstein & Jessica Silver-Greenberg, "Hedge Funds Look to Profit from Personal-Injury Suits," *The New York Times* (June 25, 2018). This draws a stark contrast to a 2016 figure, where the industry was estimated at $1 billion a year. Julie Triedman, "Topping $1 Billion Mark, Big Litigation Funder Gets Bigger," *The Am Law Daily* (Jan. 6, 2016). According to these numbers, the industry has grown 10 times over the past two years.

Litigation financing is no stranger to commercial litigation, but investment firms are expanding their portfolios to personal injury lawsuits against pharmaceutical companies and medical device manufacturers. Matthew Goldstein & Jessica Silver-Greenberg, "Hedge Funds Look to Profit from Personal-Injury Suits," *The New York Times* (June 25, 2018). These investment firms are lending funds to law firms specializing in mass torts and providing cash advances to plaintiffs involved in such litigation. *Id.* The terms in these litigation financing agreements are highly guarded and some of these loans carry annual interest rates as high as 18 percent. *Id.* This growing industry spurs grave ethical concerns and serious implications for parties in litigation.

Ethical Concerns Regarding Third-Party Litigation Financing

There is nothing new in bringing personal injury lawsuits against pharmaceutical and medical device companies. With the increase in mass tort lawsuits and verdicts, third-party litigation funders have taken a special interest in this industry. However, this boom in third-party litigation financing also brings a new wave of ethical concerns.

For instance, the American Bar Association ("ABA") noted possible ethical violations from "the inadvertent waiver of privilege" when a lawyer enters into an agreement with a third-party litigation funder. Onika Williams, "Calls for Transparency Loom Over Increase in Litigation Funding," *American Bar Association Journal* (Oct. 11, 2018). An ethical issue may arise if the attorney discloses privileged case information prior to or after the third-party litigation finance company commits funds. *Id.*

On July 30, 2018, the New York City Bar Association ("NYCBA") issued a formal opinion addressing this exact issue—whether a lawyer can enter into a third-party litigation financing agreement. The NYCBA found a lawyer cannot enter into a financing agreement with a non-lawyer litigation funder, where the lawyer's future payments to the funder are contingent on the lawyer's receipt of legal fees or in the amount of legal fees received in one or more specific matters. Formal Opinion 2018-5: Litigation Funders' Contingent Interest in Legal Fees. While the lawyer cannot enter into a third-party litigation financing agreement, nothing in this opinion forbids the client from entering into such agreement. In fact, New York State Bar Association ("NYSBA") Ethics Opinion 666 allows a lawyer to refer a client to lender who will commit to provide financial support during pendency of case. NYSBA Ethics Op. 666 (1994).

Despite efforts to stay in the shadows, third-party litigation funders are not the only ones who have taken an interest in the industry. Prosecutors from the United States Attorney's Office for the Eastern District of New York and the Florida Attorney General's Office have made inquiries after reports of "hundreds of women may have been pressured into [unnecessary surgeries] … to improve their odds of winning large cash settlements in lawsuits against the manufacturers." Matthew Goldstein & Jessica Silver-Greenberg, "Prosecutors Are Said to Issue Subpoenas Over Pelvic-Mesh Surgery Financing," *The New York Times* (Sept. 11, 2018). On the one hand, critics of third-party litigation finance argue this practice has led to a proliferation of meritless claims. On the other hand, proponents argue the practice promotes access to justice. Whether you are a proponent or critic of this practice, lawyers dealing with third-party funders should set clear guidelines about control of the litigation and must obtain client approval prior to disclosure of case information.

Transparency in Third-Party Litigation Financing

This rise of third-party litigation funding has also created concerns for many courts and legislatures spawning actions to unveil these agreements from the shadows. As of January 2017, the Northern District of California requires the disclosure of any non-party interested entities known to have "(i) a financial interest in the subject matter in controversy or in a party to the proceeding; or (ii) any other kind of interest that could be substantially affected by the outcome of the proceeding." Specifically, "[i]n any proposed class, collective, or representative action, the required disclosure includes any person or entity that is funding the prosecution of any claim or counterclaim." N.D. Cal. Standing Order, ¶ 19. Similarly, Senator Chuck Grassley introduced the Litigation Funding Transparency Act of 2018, S. 2815, on May 10, 2018. If passed, this Act will require disclosure and production of any third-party litigation funding agreements in any class action.

While there are proposed legislations pending, Wisconsin was the first state to pass legislation mandating disclosure of third-party litigation agreements. In April 2018, Wisconsin Governor Scott Walker signed Wisconsin Act 235 into law – requiring disclosure of all third-party litigation agreements regardless of whether a discovery request on the subject was made. Jamie Hwang, "Wisconsin law requires all litigation funding arrangements to be disclosed," *ABA Journal* (Apr. 10, 2018). Unlike the Northern District of California's disclosure requirement, which requires disclosure only in class actions, Wisconsin law requires disclosure in all civil actions.

Furthermore, the Advisory Committee of the Rules of Civil Procedure has a pending proposal to expand the current initial disclosure requirements to include third-party litigation financing agreements, which are being used in multidistrict litigation. Advisory Committee on Civil Rules, Nov. 1, 2018 Meeting Minutes, 63.

Practice Tips When Dealing with Litigation Driven by Third-Party Litigation Funders

If you suspect a third-party financing agreement is in play, you should do the following:

- push for disclosure even if the rules do not mandate disclosure;
- send pointed discovery requests on the exact topic; and
- follow-up with specific deposition questions on this topic with the plaintiff.

When dealing with objections, make sure you document all your issues and your good faith effort to resolve the discovery dispute. Objections should not deter your efforts from soliciting the information during plaintiff's deposition. At worst, you gathered no additional information on the topic. At best, you will have a clear answer as to whether a third-party financing agreement is in play. Most states have very limited circumstances for when an attorney can instruct their witness not to answer during a deposition. When necessary, you may need to bring a motion to compel for disclosure.

Additionally, because many mass tort plaintiffs argue "disparity in resources," once a third-party financing agreement is discovered, you should push to include them in any proportionality, cost-shifting, and sanction discussions to even the playing field. Tarifa B. Laddon, Patrick Reilly & Blake Angelino, "On Litigation Funding: The Drug and Device Industry," In-House Defense Quarterly (Fall 2018). Alert the judge of these facts and, in many instances, the plaintiffs may even have more resources available to them than the defense.

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The opinions expressed are those of the author and do not necessarily reflect the views of the firm, its clients, or any of its or their respective affiliates. This article is for general informational purposes and is not intended to be and should not be taken as legal advice.

Are You Ready to Bring Your Career to the Center Stage in Nashville?

By Shelley Napolitano

Registration for the 2019 DRI Young Lawyers Seminar is officially open! We want you to join us in Music City from June 26–28, 2019, at the Hilton Nashville Downtown. The Young Lawyers Seminar is not to be missed. This year you'll see a return of some of your favorite events, as well as some new features!

Service Project at Thistle Farms

On Wednesday morning we will head to Thistle Farms, an organization that brings hope and opportunity to survivors of trafficking, prostitution, and addiction. After a tour of the facility, we will grab lunch at the Thistle Farms café run by survivors and then help package products made on site. This is a great opportunity to spend time with service-oriented young lawyers and give back. This outing will be an early morning trip, so be sure to make the necessary travel arrangements to join us!

Practice-Specific CLE

This year we will see breakout sessions on Wednesday afternoon geared toward your specific practice areas. These practice specific sessions are making their first appearance at the Young Lawyers Seminar. We hope that you will enjoy learning about new developments in drug and medical device, product liability, insurance defense, medical malpractice, commercial litigation, and labor and employment, and making new friends in your area of practice.

SLDO Session

New to the seminar this year, we will meet with attorneys active in state and local defense organizations on Wednesday afternoon to address the intersection of these organizations with DRI. Teamwork makes the dream work!

First-Time Attendee Breakfast

If you're a newbie, don't worry! Our harmonica-playing, two-step dancing committee chair, Baxter Drennon, will give you the scoop on what it means to join the Young Lawyers and take advantage of all the seminar has to offer. This early morning breakfast will take place on Thursday before the start of seminar programming.

Dine-Arounds

How else do you get to know your fellow Young Lawyers than over dinner at some of the best restaurants Nashville has to offer? The food is great, but the company is better! Be sure to keep an eye out for the dine-around sign-ups as the seminar gets closer.

Women in the Law & Diversity and Inclusion Luncheon

On Thursday, the Women in the Law and Diversity and Inclusion Committee liaisons will present the Honorable Sheila D.J. Calloway of the Juvenile Court of Metropolitan Nashville & Davidson County. This event will feed your belly and your mind. Sign up for this luncheon when you submit your registration form for the seminar.

Fast Pitch

Fast Pitch returns to Nashville this year, bringing you the opportunity to get up close and personal with in-house counsel to talk about your business. Prepare your best pitch and get tailored advice on how to improve. There's no reason to miss out on this audition!

Brewery Tour

Once the programming concludes, put on your boots and have a honky-tonk of a time touring some local Nashville Breweries on Friday afternoon. Pair your brew with some mouth-watering barbeque, yard games, and great company. Brews, barbeque, and transportation will be included in the cost of the event, and you can sign-up with the Activities Committee.

As we get closer to the seminar, be on the lookout for Happy Hours in your state to get the party started! Bring some friends. It'll be a great time!

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Leadership Note

The Chair's Corner

Be Cool, Be Kind

By Stephanie M. Wurdock

"Be kind whenever possible. It is always possible." **– Dalai Lama**

At the beginning of each New Year, many of us set resolutions or goals. Maybe you chose a "word for the year" or maybe you made a promise to yourself to finally get in shape. Maybe you set a billable hour or financial goal. Maybe you started a reading challenge, a running challenge, or a diet challenge. Or, maybe—if you're like me—you didn't set any goals because life is really busy and you forgot or because you never stick to them anyway so really what's the point?

Whether you set a goal for 2019 or not, I want to encourage each and every one of you to set a new goal for your practice right now. (Listen—I know we are already four months into the year so maybe an article about New Year goals isn't very timely and you are thinking, "Seriously, Wurdock? Get with it." But this is the first chance I get to talk to you and I think this is really important, so stay with me here.)

I want you to set a goal of being kind. To your co-workers, to your opposing counsel, and—most importantly—to yourself.

Y'all. Life is hard. And the practice of law is stressful, and for some reason it can attract really difficult personalities. If you let them, these three things (life + stress + difficult people), combined over time, can really do a number on your mental and physical health.

There are a vast number of ways to combat this. But perhaps the simplest (though definitely not the easiest) way is to *just be kind to people*.

Research shows that being kind to others makes you feel good and improves overall well-being. We don't have time to go into the biology/psychology of that here, but if you're interested in reading more, email me and I'll send you some links. Or you can do what I did and Google "does being kind make you happy."

So now we know that being kind makes your happier. How do we apply this to our law practice? Here are some quick tips that have worked for me. I urge you to test them out:

- **Never ascribe to an opponent motives meaner than your own.** We are often quick to judge, quick to doubt, and even quicker to jump to conclusions. This is especially true in the practice of law. Take a moment to give others the benefit of the doubt; you may be pleasantly surprised. More than likely opposing counsel is *not* actually out to get you. They just forgot the deadline or they are super busy.
- **Don't send that snarky email.** We've all done it. You get a snarky email from opposing counsel and your knee jerk reaction is to respond in kind. Just don't do it. Ethics and professionalism issues aside, responding to snark and negativity with more snark and negativity just keeps the cycle going. Write out your snarky response *with the "to" line empty* and let it sit in your "drafts" folder overnight. Then go back the next day and write out a kind, professional, non-inflammatory response.
- **Go out of your way to congratulate others.** If you see in your local bar newsletter or on LinkedIn or in a state jury verdict reporter that someone you know – maybe even your opposing counsel (gasp!)—won a trial or won a promotion, reach out and congratulate them. It doesn't have to be long or over the top. Just a simple email saying "Hey I saw this thing you did and that's awesome and you should be really proud" will suffice.
- **Thank and reward your staff.** Did your support staff work their butts off helping you with a huge document review project? Did they work overtime to help with trial? Are they just consistently really good at their jobs? *Thank them*. With words, with a Starbucks gift card, with a bottle of wine, with lunch on you, whatever. *You* know you appreciate them, but *they* might not. So tell them.
- **Before you reprimand someone, make sure everything is OK.** There have been times someone on my support staff did not docket a deadline or forgot to attach an important exhibit to a court filing. And I yelled at them about it only to find out their aging parent was seriously ill or their dog needed to be put down. Always check to see if there is a reason someone has fallen down on the job before

reprimanding them. You still need to correct the problem, but do it with compassion.

- **Don't beat yourself up.** I recently finished reading the Count of Monte Cristo (10/10 – highly recommend). It was written 175 years ago but contains this little nugget: "Pretend to think well of yourself and the world will think well of you." In other words, "Fake it 'til you make it." This axiom has been around forever, and it just goes to show that every person, from the beginning of time, suffers from Imposter Syndrome. We are *all* just trying to figure things out and learning as we go. I promise you that even the guy who has been practicing at your firm for 100 years still makes mistakes and doubts himself. Well I am here to tell you that you are doing a great job. You are awesome. And you need to cut yourself some slack.

So I again urge you – Incorporate more kindness into your law practice. Even when it's hard. *Especially* when it's hard. I think you will be pleasantly surprised by how it makes you feel.

And if being kind doesn't change anything for you, that's OK, too. Because I can promise that you will have made life better for those you interact with on a daily basis. And you could do a lot worse.

"It's not our job to play judge and jury, to determine who is worthy of our kindness and who is not. We just need to be kind, unconditionally, and without ulterior motive, even - or rather, especially - when we'd prefer not to be." – Josh Radnor (Yes, the guy from *How I Met Your Mother.*)

Stephanie M. Wurdock is a senior associate attorney with Sturgill, Turner, Barker & Moloney, PLLC, in Lexington, Kentucky. A healthcare litigator, Stephanie works closely with medical, nursing, and therapy providers, insurers, and risk managers to defend claims of medical malpractice, wrongful death, nursing home negligence, and violations of resident's rights. In addition to being the Second Vice Chair of the Young Lawyers Committee, Stephanie also serves on the Medical Liability and Health Care Law Committee and the DRI Membership Committee.

DRI Young Lawyers Member Spotlight

Gayatri Deodhar

How and why did you first get involved with DRI?

I first got involved with DRI through my old firm—the partners were and are very involved, and really encouraged me to be involved as well. The first conference they sent me to was the Young Lawyers Conference in Austin, and I had such an amazing time that I didn't need much convincing to continue on with DRI!

What DRI committees (other than Young Lawyers) are you most interested in, and why?

Definitely Women in the Law. I think being an attorney is challenging, but being a female attorney is even more challenging, for a multitude of reasons. Having a strong professional support system is invaluable, and Women in the Law seems like the perfect place to get that.

What is your favorite part about being a lawyer?

Being an attorney requires the ability to think creatively, and even more so when you're a defense attorney. People who aren't attorneys think the law is so black and white, but what I love is finding that gray area.

When you are not practicing law, what do you enjoy doing?

I have been a dancer since I was five years old—I'm trained in a style of Indian classical dance called Bharatanatyam. Now I teach adult classes and am also part of a professional dance ensemble that's based out of Brookline, Massachusetts. I literally don't remember a time in my life when I wasn't dancing, and I hope I never have to stop.

What has been your biggest success in your legal career thus far?

Before I went into civil practice, I was a public defender, representing indigent clients charged with anything from misdemeanors to life felonies. I once had a client charged with a very serious felony in a total he said/she said case. I didn't think the alleged victim's story was believable at all, but I also knew that there was a strong possibility that she would come across as very sympathetic. Amazingly, the jury took only twenty minutes to acquit my client, and he was released after nine long months in custody. The hug I got before he left the courthouse that day was the best reward I could've asked for.

What is most important piece of advice you have been given related to practicing law?

To trust my own instincts. When I first started practicing law, I had a tendency to run my ideas past everyone before I acted on them. My supervisor finally told me that I had good instincts, but needed to trust myself more. I'm still a work in progress where that's concerned, but having trust in yourself and your own judgment will truly help your practice so, so much.

What is the greatest sporting event you've ever been to?

A Red Sox game at Fenway. Although let's be honest . . . I was mainly there for the food.

What was your very first job?

This is so embarrassing . . . for one summer, I worked (part-time) as a Kumon grader. Yes, that is actually a thing. My very first paycheck was for a whopping $16, and I thought I was so rich.

If someone is visiting your city, where is it essential that they go to eat?

Boston Chops in the South End, for the best steak frites ever. Or anywhere in the North End for delicious Italian food.

Gayatri R. Deodhar is an associate with Litchfield Cavo LLP in Lynnfield, Massachusetts. She previously worked as a staff attorney for the Committee for Public Counsel Services in Massachusetts, representing indigent clients in criminal matters in the District and Superior Courts. She is the Co-Chair of Social Media for the Young Lawyers Committee, and can be reached at deodhar@litchfieldcavo.com.

Membership Minute

The Five Easy Steps to DRI Recruiting

By Jami Lacour Ishee

Here are the five easy steps to DRI recruiting:

- List five colleagues you can reach out to—they may be classmates from law school or attorneys from your state and local defense organizations, a non-legal organization, or a neighboring firm.
- Call them, meet for coffee or cocktails, or simply send an email to express how much you have enjoyed DRI, the continuing legal education (CLE) seminars, the networking with over 20,000 national members and in-house counsel of major corporations, the friendships, the career development, and the leadership, publication, and speaking/presentation opportunities, which you think they would also greatly enjoy and benefit from.
- Talk about the benefits of the online forum, legal research resources, and expert databases, as well as the monthly publications on cutting edge legal issues specific to the young and seasoned attorneys, student loan refinancing through Laurel Roads, and entertainment discounts with ticketsatwork.com.
- Don't forget that every state has mandatory CLE requirements, and a DRI membership pays for itself with the *free seminar certificate* for new DRI Young Lawyer members and $100 new member CLE credit for all other new DRI members.
- Fill out the DRI application for your friend, place your name on the "referred by" line above Young Lawyers as the referring committee, and ask if you can send the application into DRI on their behalf—DRI can just send a bill for the membership dues.

Do not let your friends and colleagues miss another year of limitless career-building opportunity. Get an application completed and sent in to DRI today!

Jami Lacour Ishee is an associate on Davidson, Meaux, Sonnier, McElligott, Fontenot, Gideon & Edwards, LLP's litigation defense team in Lafayette, Louisiana. Her practice focuses on insurance defense, premises liability, products liability, general negligence defense, FELA litigation and railroad defense. She is the Co-Chair of Membership for the Young Lawyers Steering Committee and can be reached at jishee@davidsonmeaux.com.

Address the Stress: Using Yoga and Mindfulness to Reduce the Stress in Your Law Practice

By Nathan Pearman

It goes without saying that the practice of law and handling complex litigation can be extraordinarily stressful. Our profession is adversarial and competitive and, thanks to the glories of technology, we are on call 24/7/365. In addition, we are often juggling multiple deadlines from clients expecting flawless results. This combination of factors, sadly, leads to the statistics we all have heard: lawyers are twice as likely to abuse drugs and alcohol as non-lawyers, and nearly four times as likely to suffer from depression.

I discovered my yoga practice early in my career as a litigator, and eventually, yoga became such an essential part of my well-being and happiness that I decided to give up my weekends for three months to become a certified Registered Yoga Teacher at the 200-hour level. Today, I teach two permanent yoga classes each week to a variety of students—new yogis and the "yogi veterans" in the front row with the perfect chaturanga pose.

Yoga has been shown to reduce stress in a variety of ways: decreasing the secretion of cortisol, the primary stress hormone, stimulating the release of serotonin, promoting sleep quality by increasing the secretion of melatonin, and improving breathing through the practice of pranayama, to name a short few.

Here are a few basic practices with breath and asana (poses) that are particularly useful when combating stress, anxiety, and fatigue:

Lion's Breath

This is a fun breath control practice that I integrate into my vinyasa flow classes. Lion's Breath stimulates relaxation through a sudden release. For Lion's Breath, raise your arms on a deep inhale through your nose, and then, tilting your head back, open your mouth wide to exhale loudly with your tongue out. This is a fun breath exercise that stimulates your energy.

Fire Breath

This breath control practice is great for detoxing, and well as building up heat in the body. In a seated, meditative posture (with the knees lower and the hips elevated), reach the crown of the head tall and inhale gently through your nose. Then, as you engage your core and place one hand on the belly, exhale out through the nose rapidly and in short spurts. Make sure that you consciously match the length and depth of your inhales and exhales.

Alternate Nostril Breath

This breath control practice is fantastic for clarity, focus, and calming the mind. With your thumb and ring fingers extended, place your right thumb over your right nostril and inhale through the left nostril. Next, use your ring finger to constrict the left nostril and exhale through the right nostril. Now alternate, switching and inhaling to seal breath in before switching sides. Continue for at least 1–2 minutes.

Chair Pigeon Pose

We hold so much emotion in our hips and crossing our legs while seated can create imbalances in the hips and lower spine. This posture can be done to realign and improve your posture. With both feet flat on the floor, cross your right leg over the left at a 90-degree angle, flexing the foot to avoid placing pressure on the knee. In an upright seated position, gently press on the inner thigh to stimulate a gentle to moderate stretch on the outer part of the right thigh. Stay there for 7–10 breaths before alternating sides.

Desk Chaturanga/Desk Upward Facing Dog

This is a personal favorite of mine. This practice energizes the arms and allows the muscles around the neck to relax. Place your hands approximately shoulder-width distance at the edge of your desk and step back your feet so your torso is in a diagonal line to the floor. Next, with your feet firmly placed, inhale as you lower the chest and bend the elbows to a 90-degree angle, hugging in elbows toward the ribs. Next, bring the chest through and press into the palms, bringing the hips toward the desk and sliding the

shoulder blades down the back. Hold in this upward-facing dog for 5–10 breaths.

These few breath control and asana poses can clear your mind and allow your breath to deepen, allowing you to move through your day more productively, with more clarity, and in a better mind-body balance.

Nathan Pearman is a senior associate attorney in the Dallas office of Gordon & Rees. He represents small businesses to large global corporations in complex litigation involving high-stakes commercial disputes, employment matters, toxic exposures, and product liability defense. Mr. Pearman has successfully tried cases and arbitrations and handled appeals in state and federal courts. When he is not litigating, Nathan is also a certified 200-hour yoga instructor with the Yoga Alliance.

News & Announcements

And The Defense Wins

Franklin Beahm and Christopher Otten

DRI members **Franklin Beahm** and **Christopher Otten** of Beahm & Green in New Orleans, Louisiana successfully defended a hospital liability claim centering on the post-Katrina environment, *Hitchens v. Touro Infirmary*. The plaintiffs, family members of the decedent-patient claimed the conditions in the hospital caused or exacerbated the decedent-patient's pre-existing health issues and caused or contributed to her death approximately one month after Hurricane Katrina. The plaintiffs sought damages in the amount of $800,000. The case was tried to the judge, who took the matter under advisement and entered a defense judgment in favor of the hospital with written reasons in January 2019

Share Your "Wins"

Have you or one of your fellow young lawyers recently received an honor, a promotion, or a defense win? Contact the editors Taryn Harper (harpert@gtlaw.com) and Anna Tombs (Anna.Tombs@casselsbrock.com) so we can share it in *Raising the Bar*!