



# Raising the Bar

The newsletter of the  
Young Lawyers Committee

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## Featured Article

# Young Lawyers Explore the South

By Samantha Burnett, Katie Fillmore, Elizabeth Googe, and Candace M. Deer



What do honky-tonks, hot chicken,

country music and awesome legal programming have in common? They can all be found in the great city of Nashville, Tennessee! The 2019 Young Lawyers (“YL”) Seminar will be taking place in this iconic southern metropolis June 26–28, and you are invited. Don’t miss out on a fantastic opportunity to explore one of the country’s most fun cities with your YL friends and colleagues.

You will have the opportunity to indulge in the incredible food scene at some of the city’s hippest restaurants on Wednesday and Thursday nights. And not to worry, the Activities Committee will be making reservations at a number of restaurants around the city. All you have to do (after you register for the seminar) is be on the lookout for Dine-Around sign-ups alerts. We will send these around in early June so make sure you sign up to enjoy a great dining experience with old and new friends. Whether you want to sample locally sourced fare or try something a little more adventurous, there will be something for everyone!

After dinner, join the rest of your YL colleagues at a local hotspot to continue the merriment. Take this opportunity to sample a local specialty brew or a good southern cocktail from Nashville’s seasoned bartenders while you enjoy the twang and fantastic sound of country music.

At the conclusion of the seminar on Friday, seminar attendees will have the opportunity to visit a few of the city’s local breweries and distilleries! Transportation will be provided, and participants will be picked up at the Hilton Nashville, Downtown. We will then begin our tour of some of the city’s local breweries, where we will be

provided educational tours as well as a BBQ lunch. If you’re interested (and who isn’t?), please keep an eye out for more details to be provided as we get closer to the Seminar. Space will be limited, and you don’t want to miss an opportunity to explore Nashville in such a unique way!

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## Article of Note

# The Leaky Legal Pipeline

By Amanda E. Melrood



## The Problem

Women leave the legal field at disproportionately high rates and are consistently underrepresented in legal leadership roles. Although women make up roughly half of J.D. candidates, summer associates, and associates in private practice, only 22.7 percent of partners and 19 percent of equity partners are women. Similarly, women make up only a quarter of general counsels, 32.4 percent of law school deans, and 27.1 percent of federal and state judges. Finally, women lawyers' weekly salary is still only 77.6 percent of male lawyers' weekly salary. "The stagnant gender diversity is due to the attrition of women, who exit the industry as their careers progress and fail to enter law firms' top tiers." (Claire Zillman, *Law Firms' Gender Diversity Programs Aren't Keeping Women in the Industry*, *Fortune* (Apr. 19, 2017)).

The gender gap is not just a problem for women lawyers, but for our clients and firms as well: "When senior women lawyers leave the profession, there is a reduced range of legal talent to offer clients, a narrower base for firms and businesses to develop robust client relationships, a limited ability to recruit and retain skilled women lawyers at all levels and, ultimately, serious challenges to an organization's future growth and revenue." (Achieving Long-Term Careers for Women in Law, ABA Presidential Initiative).

## Why Is This Happening?

One explanation for the female talent drain is a version of the "lean in" theory popularized by Sheryl Sandberg, that women leave the legal field because they lack ambition, should be more assertive, and simply need to stop holding themselves back. But as Michelle Obama recently said, "that s\* percent# doesn't work all the time." Moreover, the "lean in" approach unnecessarily blames women for their lack of progress and fails to recognize the external barriers which, over time, result in career stagnation.

The ABA's Presidential Initiative on Achieving Long-Term Careers for Women in Law has conducted research on women lawyers' disproportionately high rates of attrition. The report of the Initiative's springboard summit at Harvard Law School identified three reasons that women leave firms and the legal profession: (1) lack of fairness, transparency, and access to paths of success; (2) lack of flexibility and work-life balance; and (3) lack of inclusiveness and a welcoming culture. Variations of unconscious bias, stereotyping, and in-group favoritism permeate each of these three reasons.

## Lack of Fairness, Transparency, and Access

ABA summit panel participants agreed that "informal systems and lack of transparency lead to unequal access to quality assignments, training and sponsorships, and client relationships." Unofficial and subjective policies regarding assignment, promotion, and compensation decisions "can

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allow unconscious biases to affect decisions about who advances and how much lawyers are paid. . . . [Conversely], the use of ‘metrics’ in the typical firm compensation systems often leads to inequitable decisions on compensation.” Lack of women in leadership positions means few mentoring, marketing, and sponsorship relationships for women. “When women realize that they have not had the benefit of the networking opportunities and relationships that determine success, they leave.” See *Leaky Pipeline #1: Examining the Premise of a Leaky Pipeline*, Law School Transparency: Women in the Law (Nov. 21, 2016).

### **Lack of Flexibility and Work-Life Balance**

Women in the law lack the time and opportunities for upward mobility. Despite the fact that ever-higher percentages of women are sole or primary breadwinners, the burden of caring for children and other family members still falls disproportionately on women. Women who take advantage of flex schedules are still required to meet full-time work output, which is extremely difficult to accomplish. Many women lawyers cannot compete at the same level as their male colleagues because they simply do not have the same amount of time to devote to their business life as most men do.

Importantly, firms continue to be wedded to the billable hour as the sign of a lawyer’s commitment to the firm. Yet, many firms fail to reward the essential, but intangible, “office house work” that women lawyers are often assigned to or volunteer for, such as recruiting and mentoring new associates and nurturing client relationships. Meanwhile, men are free to bill more time.

Women’s attempt to balance the competing demands of family and work is complicated by the fact that “it is less culturally acceptable for women to choose work over family,” and women often “experience social and familial pressure to sacrifice their careers.” Men do not experience this pressure because they are expected to focus on their careers and financially support the family (Report on the National Summit Held at Harvard Law School November 7-8, 2017, ABA Presidential Initiative on Achieving Long-Term Careers for Women in Law).

### **Lack of Inclusiveness**

Women feel like outsiders, excluded from the traditions of the male-dominated culture at law firms. Women are not invited to participate in social and business-development activities that are essential to career. Relatedly, more women than men report feeling treated as a token repre-

sentative for diversity. Firms may make genuine efforts at creating diversity, but those endeavors are wasted if they are not meant to help people feel included. Thus, even though men and women share overall satisfaction with the practice of law, women feel pushed out.

### **Retention Solutions**

To increase transparency, firms need to implement formal, written policies for assignment and evaluation processes. Data on assignments and feedback can be measured and tracked to ensure that all attorneys are receiving high-quality training. Practice group leaders, client leads, and managers should be held accountable for uniform and consistent implementation of these policies and providing access to client- and business-development opportunities.

Firms should also adjust their compensation policies to reward “office house work.” Time spent on non-billable tasks, such as committee service, pro bono hours, and mentoring can be tracked by lawyer, gender, and race or ethnicity and compared to data on compensation and billable hours. Compensation and bonuses should account for more than rainmaking and client origination.

To promote work-life balance, firms should allow some amount of telecommuting, flexible work arrangements, and a part-time partnership track. Perhaps counterintuitively, employers need to encourage men to take paternity leave, which will take away some of the stigma women experience for doing so. Until men are supported and empowered to publicly value caregiving, it will continue to be just a women’s issue and not a family issue.

To strengthen inclusion, employers must actively promote women to internal positions of power. Membership and leadership on firm committees, practice groups, and client teams should be rotated. Firms must also take an intentional approach to women lawyers’ professional and career development, such as through strong, purposeful mentoring relationships and continuous training in business development.

### **Conclusion**

Advancing women’s place in the law is not about “leaning in” or changing women. “It’s about changing the places where they work so those places can retain and advance many more women than they currently are.” (*Why Women Leave the Profession*, ABA (Nov. 28, 2017)).

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## Leadership Note

## The Chair's Corner

## A New Perspective on Goal Setting

By Baxter D. Drennon

*"A goal without a plan is just a wish."*

Each December, as I prepare for a new year, I sit down and write out my goals for the upcoming year. I enjoy the excitement that comes with the hope of the new year. Usually, I spend time over a cup or two of good coffee and write out goals in three categories: personal, spiritual, and professional. As a young professional, I have read or been taught about the benefits of goal setting and best practices for goal setting. Like many of you, I have spent years creating SMART (specific, measurable, attainable, relevant, and time bound) goals. This year, though, I have a new perspective on goal setting brought on by reading Jeff Haden's new book *The Motivation Myth: How High Achievers Really Set Themselves Up to Win*.

In the book, Haden theorizes that the recipe for gaining motivation is success. The key is achieving a series of small, minor successes. Doing the correct thing over and over again leads to predictable or inevitable large successes.

How does Haden's theory on success inform goal setting? According to Haden, the best way to achieve any large goal is to set it and forget it. Continued focus on a large goal can lead to being overwhelmed with the sheer size of the goal. Instead of focusing on achieving the end result, achievement comes through using the goal to guide the creation of a process for accomplishing the goal. The process should be extremely specific and capable of being repeated on a regular basis. .

For example, using Haden's theory, if you set a goal to collect \$500,000 for your billable work in 2019, you would use the goal to inform your process for meeting the goal

and then forget the goal. A specific process for that goal would require analyzing some basic information, like your average billable rate and your collections rate (percentage of billed amounts collected); let's say \$250 per hour and 96 percent. Then, you would consider how many days you plan to work for the year; let's say 250 (50 weeks/5 days per week). Using that information, you would have to bill 8.4 hours per day to reach your goal of collecting \$500,000. It is possible that your process will be even more specific. For example, maybe you will bill 10 hours each Monday, so that you have some time to spare later in the week. Either way, just like that, your big goal is now reduced to a daily, manageable process, a process that allows for achieving a series of small, minor successes. If you are successful in completing your process on a daily basis, you will be successful in achieving your goal.

Instead of collections, or perhaps in addition to collections, maybe one of your goals for 2019 is to build a referral network, build a book of business, or increase your national exposure. For any of those goals, the start of your process is easy: become actively involved in the Young Lawyers Committee. I can tell you from personal experience there is no better place to start.

Best wishes for the New Year!

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*Baxter D. Drennon is the chair of the Young Lawyers Committee and a member of the Membership Committee. Baxter is a partner at Wright, Lindsey & Jennings LLP in Little Rock, Arkansas, who focuses his practice on both product liability and transportation litigation.*

## DRI Young Lawyers Member Spotlight

## T. Matthew Bailey

**How and why did you first get involved with DRI?**

I got involved with DRI to take advantage of its excellent programs—in particular, a primer on drug and medical device litigation aimed at young attorneys. I plan to increase my involvement to take advantage of more programs and the opportunity to network with other lawyers in my field.

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

Given my practice areas, I am most interested in the Drug and Medical Device, Product Liability, and Commercial Litigation Committees, though I am also interested in learning more about the Appellate Advocacy and Lawyers' Professionalism and Ethics Committees.

**What is your favorite part about being a lawyer?**

I really enjoy having the opportunity to help clients respond to and resolve claims asserted against them in a variety of contexts. It is particularly gratifying to offer strategies designed to minimize the expense and harm associated with such claims, whether through favorable pre-suit resolution or, if necessary, by helping those clients respond to litigation.

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

I enjoy spending time with my wife, Jillian, and getting outside as much as possible, whether playing tennis, basketball, running, or hiking.

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

Drafting a successful motion to dismiss on behalf of a major client in substantial pending litigation.

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

That the practice of law involves uncertainty, many mistakes, and is a learning process throughout. Basically that you should never be complacent and should always strive to hone your skills.

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

The 2017 SEC Championship between UGA and Auburn. Georgia won 28-7, avenging an earlier regular season loss to Auburn. Go Dawgs!

**What was your very first job?**

I worked at a pool concession stand when I was 12. I was mostly in it for the free candy and soda.

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

Go to Ponce City Market and check out the variety of delicious, authentic cuisine options – not to mention the well-stocked beer garden.

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*T. Matthew Bailey is an associate in the Atlanta, Georgia offices of Troutman Sanders LLP and practices product liability and general business litigation, with a focus on medical device litigation. He is also involved in a wide range of commercial litigation disputes. Mr. Bailey went to law school at Emory University in Atlanta, and graduated with high honors in 2016. While in law school, Mr. Bailey was an Executive Managing Editor of the Emory Law Journal and a Dean's Teaching Fellow. Following law school, he clerked for the Honorable Michael F. Urbanski, United States District Court for the Western District of Virginia.*

## Membership Minute

# Q & A with Dan Gerber

By Clay Waterman



For this membership minute, I had the pleasure of sitting down with a long time distinguished DRI leader, Dan Gerber. I asked Dan how he became involved with DRI and we discussed his experience with membership. Dan has held a number of positions with DRI, including serving as Chair of Membership and the Board Liaison to the Young Lawyers Committee. A more comprehensive list of Dan's work in DRI can be found under his photo below. Dan's insight can be used to assist members in recruitment.

### How did you first become involved with DRI?

I was first exposed to DRI by attending an Insurance Fraud seminar in San Francisco in 1997. The quality of the programing was exceptional, but I was more impressed with how welcome those in attendance made me feel. From there I attended more insurance and life, health and disability seminars as my practice developed in these areas. I attended committee business meetings and phone calls. Eventually was given my first leadership position.

### As an experienced DRI Member that has held many leadership positions and generated substantial amounts of work from your DRI connections, what advice do you have for new members specifically with regard to generating work?

Martin Luther King said that life's most important question is "What have you done for others?" My advice for success in DRI and more importantly life is to give without expectation. Do for others selflessly. Give some more, then leave it better than it was given to you. I have never asked others for business. I believe in DRI. I have just given to the organization and those in it. Trusting one's client to a referral is one of the most important recommendations a lawyer can make. If the client is happy, then he or she trusts the referral source even more. If the client is disappointed, then he or she may question the referral source's judgment. I believe that the hard work one does for DRI and its members reflects the way a lawyer practices. In terms of what this "hard work" looks like, I always refer young professionals to the article "A Message to Garcia" by Elbert Hubbard. It was written in 1899, but it is as true today as it was then with one exception. The article refers to "young men" and should refer to "young men and women." Google this article, it is worth the read.

### Do you have any pointers to combat push back if a potential new member has some hesitation about joining DRI?

Einstein had a great phrase where he referred to the genius in everyone. He concluded the phrase by stating that if you ask a fish to climb a tree it will fail. Each person must find his or her own genius, but good leaders must also recognize this and support it. DRI has something for everyone. If a person wants to be an author, then opportunities abound. If they want to be a speaker, then there are opportunities at webinars and programs. If you want to be a business developer, then there are opportunities everywhere for this. It is important though to recognize your strengths and ask DRI leadership to help you hone them. If a young lawyer faces push back at his or her firm for DRI involvement, then a bridge must be built that shows the firm's leadership that the lawyer has found his or her genius (and that the firm will benefit from it). If anyone reading this is struggling with any of these aspects, call me. I will be happy to speak to you. Happy to make introductions. Happy to speak to those at your firm about your genius.

### What are some of the biggest benefits to joining DRI that you would share with potential new members?

DRI has many tangible member benefits. For example, the Laurel Road student loan refinancing program is worth the annual price of DRI membership (even if a lawyer's firm will not reimburse for it). To me, however, the biggest benefit of DRI is that I have built a practice of law, lifelong friendships, a career, and a law firm because of it. It is an organization that over the course of your legal career gives more back to you in intangible ways than you can imagine. It makes you a better lawyer. It brings you success. It makes you a better business person. It expands horizons and expose you to things that you otherwise would never encounter. All of this makes your legal practice more fulfilling, but more importantly makes life more worthwhile.

### How much of a role did DRI play in helping you achieve what you've achieved in your legal career?

I am grateful to so many for my accomplishments. But the "so many" are largely DRI members. These members have opened doors I didn't know existed 25 years ago. DRI has involved me in issues that I did not realize the importance of until it provided me the focus. There are certain organi-

zations in life that once you are involved keep you coming back because they make you better. This IS DRI.

*Dan Gerber is a founder of Gerber Ciano Kelly Brady LLP. He is resident in the firm's New York office where his practice focuses on high-end insurance and reinsurance issues. He also testifies as an expert on insurance matters. Dan is the former chair of DRI's Life Health and Disability Committee. He previously chaired DRI's Insurance Roundtable. Dan served two separate terms on DRI's Annual Meeting Steering Committee. He chaired DRI's Counsel Meeting Task Force and developed the current counsel meeting program. He recently completed three years as a National Director. During this tenure, Dan served as Chair of Membership for DRI, as well as Board Liaison to the Young Lawyers and the Intellectual Property Committees. Dan previously served*

*on DRI's Law in Transition Committee and its Social Media Task Force. He currently serves on the Insurance Law Committee's Steering Committee as its Reinsurance SLG Chair. He is current member of DRI's Law Institute. Dan serves on the Board of his SLDO, the Defense Association of New York. He is also active in the International and Law Practice Management Committees. He can be reached at [Dgerber@gerberciano.com](mailto:Dgerber@gerberciano.com)*

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## Timeout for Wellness

# The Lawyer's Well-Being

By Jennifer Eppensteiner



In August 2016, the ABA Commission on Lawyer Assistance Programs (CoLAP), the National Organization of Bar Counsel (NOBC), and the Association of Professional Responsibility Lawyers (APRL) conceptualized and initiated the National Task Force on Lawyer Well-Being. The list of currently participating entities has more than doubled since its inception. Additionally, CoLAP was a co-sponsor of the 2016 ABA CoLAP and Hazelden Betty Ford Foundation's study of mental health and substance use disorders among lawyers (the "Study") and of the 2016 Survey of Law Student Well-Being.

The Study, built on responses from nearly 13,000 practicing attorneys, including lawyers and judges, found that between 21 and 36 percent qualify as problem drinkers. Additionally, approximately 28 percent, 19 percent, and 23 percent are struggling with some level of depression, anxiety, and stress, respectively. For Young Lawyers, the results were particularly alarming. The Study found that those in the first ten years of practice and those working in private firms experience the highest rates of problem drinking and depression.

And while the Study's results are seemingly bleak, they can also be read as a call to action for our profession. One

such outcome is *The Path to Lawyer Well-Being: Practical Recommendations for Positive Change*, a report from the National Task Force on Lawyer Well-Being ("the Report"). In the Report, first, the authors offer three reasons to take action in response to the truth that many of our colleagues are struggling: "organizational effectiveness, ethical integrity, and humanitarian concerns."

Healthy lawyers, defined in terms of well-being and not simply the absence of illness, are good for the bottom line. Worker well-being has been linked to lower turnover, high client satisfaction, higher productivity and profitability. Moreover, improving well-being is good for clients. The report recognizes that lawyer well-being influences ethics and professionalism. It cites, for example, that major depression is associated with impaired executive functioning, and that well-functioning executive capacities are needed for the skills lawyers use every day: making good decisions and evaluating risks, planning for the future, prioritizing and sequencing actions, and coping with new situations. Finally, they explain, promoting well-being is simply "the right thing to do" from a humanitarian perspective.

In the Report, available at <http://lawyerwellbeing.net>, lawyer well-being is defined as "a continuous process in which lawyers strive for thriving in each dimension of their

lives: occupational; intellectual; spiritual; physical; social; and emotional.” Accordingly, thriving in the occupational dimension, defined as “cultivating personal satisfaction, growth, and enrichment in work; financial stability” is weighted as important to one’s well-being as “developing a sense of meaningfulness and purpose in all aspects of life” (spiritual). “Lawyer well-being” includes lawyers’ ability to make healthy, positive work/life choices to assure not only a quality of life within their families and communities, but also to help them make responsible decisions for their clients.

The Report then recommends concrete strategies for all stakeholders in the legal profession. While many action items should be taken at an organization level, some can be embraced and performed by each of us. First, acknowledge the problems and take responsibility. We must support each other and take leadership roles wherein we can raise awareness of the issues. Second, familiarize yourself with the Task Force’s report as a launch pad for a profession-wide action plan. In addition to these directives to all stakeholders, the Report also provides concrete action items specifically directed at judges; regulators; legal employers; law schools; bar associations; lawyers’ professional liability carriers; and lawyer assistance programs. Share the report with others who may fall into these categories and are in positions to implement change.

Third, demonstrate a personal commitment to well-being. By demonstrating commitment to core values and well-being in their own lives, leaders can positively support change. Fourth, facilitate, destigmatize, and encourage help-seeking behaviors. While this may sound like a big-ticket item, it can be accessible. Get comfortable being uncomfortable. Be willing to talk about mental health. According to the Report, research shows that the most effective way to reduce stigma is through direct contact with someone who has personally experienced a relevant disorder. Help-seeking behavior needs to be re-framed as a sign of strength instead of weakness. Share challenges you have overcome with others you think may benefit.

Fifth, build relationships with lawyer well-being experts, including lawyer assistance programs and well-being

committees. Sixth, foster collegiality and respectful engagement throughout the profession. Again, while this needs to be addressed at the organizational level, individuals can embrace this strategy, as well. Strive to be a role model for professionalism amongst your colleagues. Recognize the needs for and promote diversity and inclusion on your teams. Participate in meaningful mentoring and sponsorship programs. If you are at the start of your career, align yourself with the people who exemplify these values in their daily lives.

Other recommendations, many of which should be addressed by relevant organizations, include: (7) enhancing lawyers’ sense of control; (8) providing high-quality educational programs about lawyer distress and well-being; (9) guiding and supporting the transition of older lawyers; (10) de-emphasizing alcohol at social events; (11) utilizing monitoring to support recovery from substance use disorders; (12) beginning a dialogue about suicide prevention; and (13) supporting a lawyer well-being index to measure the profession’s progress.

Perhaps, most importantly, make a commitment to yourself to strive towards well-being in all facets of life. Do not be afraid to ask for help in whatever area you feel you may not be currently thriving. Seek out others who may benefit from your assistance and share your experiences where appropriate. Surround yourself with others who are equally committed to improving our profession and providing you with the toolset to build a lasting, enriching career in the law.

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## News & Announcements

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### Congratulations, Kristi Arth!



The DRI Young Lawyers Committee would like to congratulate Kristi W. Arth on both her promotion to partner at Bradley Arant Boult Cummings LLP, as well as the recent birth of her son. Charles (“Charlie”) Asher Arth was born

August 16, 2018, weighing 8 lbs 1 oz. Big brother Liam was excited to attend Charlie’s “birthday party”!

### Legislative Team Members Wanted

The DRI Young Lawyers Committee is seeking volunteer contributors to our 50-state legislative updates that are published quarterly in *The Voice*. You do not need to be a member of the Young Lawyers Committee to participate. This is a great opportunity to get published while staying up-to-date on changes in the law. Contributors from all states are welcome, especially the following: DE, ID, IA, ME, NH, NJ, NM, and NY. If you are interested or would like more information, please reach out to Matt McCluer ([matthew.mccluer@bswllp.com](mailto:matthew.mccluer@bswllp.com)) and Danielle Luisi ([dluisi@matushek.com](mailto:dluisi@matushek.com)).

### And The Defense 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](mailto:harpert@gtlaw.com)) and Anna Tombs ([atombs@casselsbrock.com](mailto:atombs@casselsbrock.com)) so we can share it in *Raising the Bar*!