



Raising the Bar

The newsletter of the
Young Lawyers Committee

5/8/2020

Volume 16, Issue 4

Looking for
**Targeted
Contacts?**



Hit the Bullseye with **dri**

Contact Laurie Mokry at lmokry@dri.org or 312.698.6259

Committee Leadership



Chair
Shannon M. Nessier
Hanson Bridgett LLP
San Francisco, CA



Vice Chair
Stephanie M. Wurdock
Sturgill Turner Barker & Moloney
Lexington, KY



Second Vice Chair
Catherine Ava Kopiec
Rogers Townsend & Thomas PC
Columbia, SC

Editors



Natalie Baker
Medical Research Consultants
Houston, TX



Darin M. Williams
Laner Muchin
Chicago, IL



Co Editors
Ashlyn M. Capote
Goldberg Segalla LLP
Buffalo, NY



Carmen Weite
Friedman Dazzio Zulanis & Bowling PC
Birmingham, AL

[Click here to view entire Leadership](#)

In This Issue

Feature Articles

When Building Diversity, Don't Forget to Include Inclusion 2

Digital Detective Duty

Social Media as an Investigation Tool for Young Lawyers ... 3

Articles of Note

A Practical Guide to Utilizing E-Discovery for Cellphone
Searching 5

Misplaced Weights?

Questioning *Daubert's* Reliance on "Peer Review and
Publication" after the *CrossFit, Inc. v. NSCA* Saga 7

Leadership Note – The Chair's Corner

Planning for the Future

Young Lawyer Steering Committee Fly-In a Chance to Work
on BIG Goals, and Get Sentimental 8

Membership Minute


DRI Friendship 10

Timeout for Wellness

What Measures Should Employers Implement to Ensure a
Safe Working Environment in Response to COVID-19? 11

News & Announcements

Have Good News to Share? 12



laurel road

**DRI Members
get a .25%
rate discount
on student
loan refi.**

See Your Rates

Subject to eligibility

Member
FDIC

Feature Articles

When Building Diversity, Don't Forget to Include Inclusion

By Chalankis R. Brown and Jazz A. Hampton



The Problem

Law firms across the United States struggle to build and maintain diversity within their organizations. All too often law

firms concentrate much of the effort on obtaining diverse talent. In cities across the country there are diversity hiring programs, local minority bar association sponsored events, and even diversity focused on campus interviews to help firms find and hire diverse lawyers. However, law firms do not have strong internal programming focused on building inclusive work environments for their newly hired diverse candidates. The absence of an inclusive work environment is a contributing factor for the staggering retention rates among diverse lawyers within law firms in America.

The Numbers

Each year the National Association of Legal Placement (NALP) collects demographic data from law firms across the United States. NALP's law firm demographic findings illustrate that law firms struggle to retain both women and people of color over the course of their careers. According to NALP's 2019 Report on Diversity in U.S. Law Firms, 25.44% of associates were people of color in 2019. In that same year only 9.55% of partners were people of color. The drop off is even more prevalent with women. In 2019,

46.77% of associates were women, while only 24.17% of partners were women. Equity partners in multi-tier law firms continue to be disproportionately white men. In 2019, just 1 in 5 equity partners were women (20.3%) and only 7.6% were people of color. Women and people of color continue to make incremental gains in representation at major U.S. law firms compared to years past, but meaningful growth has not been made to mitigate the drop off at partner level.

Possible Solutions

When a boat is leaking, a short-term immediate solution is to start bailing water out of the boat. This can be a relentless, never-ending endeavor. The better long-term solution is to stop the slow leak by addressing the underlying issue: the holes in the boat. Law firms often try to fix the lack of diversity with a short-term solution: hire more diverse lawyers. Hiring more diverse attorneys can help in the short term, but it is not a long-term solution. If a law firm desires to improve its diversity, it must address one of the main reasons for the slow leak: the absence of an inclusive work environment.

There must be more emphasis placed on retaining diverse hires. The first six months at a firm are crucial for all parties involved, especially the new hire who is attempting to acclimate to the firm's culture while building his or her practice. Often a diverse hire will not want to rock the

We've been prepping
for your next case
for 50 years.

S-E-A

Know.

ENGINEERING, INVESTIGATION
AND ANALYSIS SINCE 1970.

boat, so this lawyer ends up not addressing their concerns or sharing ideas. A six-month retention interview is a great tool that all firms should enable after hiring diverse lawyers. The six-month retention interview allows human resources personnel to engage directly with attorneys and identify areas of satisfaction while also pinpointing any concerns the lawyer may have. The six-month retention interview helps establish a dialogue and removes some of the uneasiness about speaking up. This process allows the lawyer to feel a part of the firm's present and future plans. This also keeps the firm in the know with its talent and decreases the likelihood of being blindsided by abrupt departures to greener pastures from diverse hires.

Another tool that can be instrumental in retaining diverse hires is establishing meaningful, unforced mentor programs and relationships. Due to the lack of diversity in the law, the tried and true trope is to match attorneys based on their race or sex. For example, firms will pair up a partner of color with the newly hired associate that is also a person of color. Yet often, these individuals share nothing in common other than the fact they share the same skin tone. This is unfair to both the partner and the new hire. Another example would be having an older, diverse associate mentor a new hire. The older associate may be dealing with the same issues as the new hire but, not wanting to jeopardize his or her place within the firm, the older associate may not feel comfortable relaying these concerns. In both examples, the pairing can feel inauthentic. No person wants to work in an environment where they do not feel welcomed. Having a diverse lawyer's initial point of contact within the firm come from an inauthentic relationship creates an early fracture in the relationship.

Civil defense firms must go a step further in creating mentorship programs that are beyond lip service. Firms must go beyond sponsoring diversity luncheons once a year. Firms should identify lawyers—not just those from diverse backgrounds—who are committed to creating diverse workplaces and implore those individuals to serve as mentors. By giving diverse hires face time with partners and individuals with a certain cache within the firm's hierarchy, the sense of belonging is strengthened. Firms should

also encourage their mentors to help the diverse hires establish a stronger network of contacts. A partner may not have a strong, natural connection with a new, diverse hire. However, if that same partner could identify a contact that may have something in common with the hire, the new hire will feel the firm does care and is willing to invest in his or her well-being.

Lastly, law firms should explore the idea of implementing the Mansfield Rule in their governance. The Mansfield Rule, named after Arabella Mansfield, the first woman admitted to the Bar in the United States, attempts to increase representation of diverse lawyers by having firms consider at least thirty percent women, people of color, LGBTQ, and lawyers with disabilities for positions of leadership, partner promotions, formal client meetings and other important tasks within the firm. In 2019, a little more than one hundred firms across the United States publicly pledged to implement the Mansfield Rule. *102 Law Firms Sign On To Pilot Mansfield Rule 3.0* (Sept. 3, 2019), available at <https://www.diversitylab.com/pilot-projects/mansfield-rule-3-0/>. If diverse lawyers believe and receive legitimate opportunities to advance within the firm, retaining those individuals is made much easier.

There are ample people from diverse backgrounds looking for the opportunity to advance in the legal community. The onus is on firms to identify these talented individuals and give them the necessary tools to thrive in a rich environment without forcing those individuals to abandon or seek out the very things that made them diverse in the first place.

Chalankis R. Brown is an associate with Ball, Ball, Matthews & Novak, P.A. in Montgomery, Alabama. Chalankis can be reached at cbrown@ball-ball.com.

Jazz A. Hampton is an associate with Foley & Mansfield in Minneapolis, Minnesota. Jazz can be reached at jhampton@foleymansfield.com.

Digital Detective Duty

Social Media as an Investigation Tool for Young Lawyers

By Jaime L. Regan



Though defense lawyering often goes hand-in-hand with use of a private investigator, as technology continues to play a role in the foreground of everyday life, the internet and social media can provide valuable tools for young attorneys looking to uncover information relevant to their cases. In fact, digital digging can often yield treasure troves of public information that are sitting in virtually plain sight, which young lawyers can capitalize on in investigating plaintiffs and potential jurors during voir dire.

Social Media in Vetting Plaintiffs

Young lawyers can reap many benefits in using social media to investigate plaintiffs. A plaintiff's publicly available social media posts on platforms such as Facebook, Instagram, Twitter, LinkedIn, Reddit, Tumblr, and Tik Tok (to name a few) often have photographic, video, and text content that reveals important information about plaintiffs' daily lives. A plaintiff who alleges he or she is physically injured may post photos of engaging in physical activity, exercise, or taking an active vacation. A plaintiff who claims to be suffering from emotional distress may post status updates that speak to the contrary. A plaintiff who claims to be unemployed may have posted current employment information online. Obtaining such information from social media platforms can—if properly authenticated at trial—be introduced as a party opponent admission to undercut a plaintiff's damages case. Similarly, such information can be used as leverage by confronting a plaintiff with this content at a deposition or mediation where appropriate. That said, it is important to be strategic about the timing of revealing your knowledge of a plaintiff's social media presence and content. Once a plaintiff learns that you have knowledge of, and are monitoring, his or her social media accounts, he or she is likely to stop using them, make them private, or delete them altogether.

Additionally, there are potential ethical issues of which the young lawyer should be wary in using social media to investigate plaintiffs. Primary among these issues is that, in almost every state and federal jurisdiction, a lawyer is only entitled to view a plaintiff's publicly available social media content, or restricted content that a plaintiff grants the lawyer access to with complete knowledge of the

identity of the lawyer requesting access to the restricted content. As such, an attorney cannot seek access to private or restricted social media information by using a disguised profile name or identity, and cannot deploy someone else (a paralegal, expert, or simply a friend) to request access to the plaintiff's protected social media content purely for purposes of providing that content to the attorney. Similarly, if the plaintiff is represented by counsel, the attorney is strictly forbidden from engaging in any communications online and/or via social media platforms with a represented party. Such communications include both directly messaging or "tagging" the plaintiff in posts, and even viewing a plaintiff's LinkedIn profile with privacy settings that reveal your identity.

Social Media in Vetting Prospective Jurors

Use of social media to investigate jurors is generally permitted, though trial judges are free to bar attorneys from conducting this internet research. Assuming that your judge or jurisdiction has not imposed any restrictions on use of social media to investigate a potential juror, and in the event that you are not using an (often expensive) jury consultant at trial, a wide array of content can often be pulled simply by plugging a panelist's name into a search engine or social media platform directly.

In fact, social media searches will often reveal publicly available profiles that illuminate a potential juror's social and political views that might impact your case, but that might not be revealed during voir dire. Knowledge of these views can help a young lawyer ask questions of the panelist that might elicit potential biases during voir dire and which could avoid empaneling an unfriendly juror. By the same token, with knowledge that a potential juror has views that you believe will be favorable to your case or client, you can ask questions designed to show your adversary that the panelist will make a good juror for his or her case, too.

As beneficial as social media can be in discovering additional information about prospective jurors, there are of course some pitfalls to avoid. First, make absolutely sure you do not contact the prospective juror in any way via social media (including sending a friend or connection request, directly messaging the individual, or—again—viewing the individual's profile on LinkedIn with your privacy

settings allowing the panelist to see your identity). Ex parte communications between attorneys and jurors (or potential jurors) are generally strictly forbidden. In fact, such communications are often grounds for a wide array of penalties based on the jurisdiction, including but not limited to attorney sanctions, dismissal of the juror, and mistrials. Similarly, some jurisdictions have explicit rules that attorneys who conduct internet research on jurors may not leave a “footprint” such that the jurors become aware that their profiles have been viewed, so it is critical in such jurisdictions to ensure that you do not run afoul of these rules. Second, even where no such rules exist, it is generally strategically disadvantageous to disclose to jurors the fact that you have conducted social media searches of them. While searching for publicly available information may not be legally or ethically problematic in and of itself, revealing your social media search to a juror may cause the juror to feel “watched.” It may also tip off a less savvy adversary who was not previously using social media to investigate panelists that social media can in fact be a powerful tool.

In an increasingly digital age, the careful and ethical investigation of content posted on social media by both plaintiffs and prospective jurors can give young lawyers strategic advantages in defending their cases. Use of photographic, video, and text content posted by plaintiffs and prospective jurors in the manners described above may allow the young lawyer to reap many rewards during all phases of discovery, settlement negotiations and dispute resolution, and trial.

Jaime L. Regan is an attorney in the New York City office of Harris Beach PLLC. Her practice focuses on the defense of complex product liability disputes and mass tort claims against manufacturers and distributors of consumer and commercial products, as well as premises owners, in catastrophic injury and property damage cases. She is the Co-Vice Chair of the Social Media Subcommittee of the DRI Young Lawyers Steering Committee.

Articles of Note

A Practical Guide to Utilizing E-Discovery for Cellphone Searching

By Kristen Wagner Durant



Have you considered how helpful it would be to search an opposing party’s phone or phone applications but didn’t know where to start? It seems everywhere you turn these days there are articles concerning the evolution of e-discovery. The Federal Rules were amended to account for the growing necessity of e-discovery and states are following suit. But still, the idea of utilizing e-discovery to obtain information or data not normally accessible seems daunting. This article will serve as a quick guide to show the practical steps in utilizing e-discovery to recover cellphone data.

Preserve

Although this may go without saying, it is vital to reach out to your clients and inform them of their duty to preserve potential evidence when litigation can be reasonably anticipated (and perhaps before). With e-discovery, that also means their computers and their cellphones. Some less sophisticated clients may not realize that their cellphone

and the data it contains may be evidence and should be preserved to avoid any negative inferences down the line.

Besides having this conversation with your clients, it’s also important to get a preservation letter out to opposing parties outlining that you anticipate the use of e-discovery. Specifically request that they preserve their cellphones. Addressing this issue early can help in later retrieving the most useful data possible or obtaining a negative inference regarding the missing data.

Research

If you do not have previously established contacts in the forensics field, a quick Google search of a “computer forensics expert” or “cellphone forensics expert” in your area can get you a few names for a proper vetting. After interviewing these professionals about what phone mirroring services they offer, you should have a good idea of what the process looks like.

For reference, the most convenient services here in Kansas City, Missouri, allow for a phone to be dropped off

in the morning and picked up in the afternoon. During that time, the forensic expert does a complete mirroring of the phone, meaning, the expert essentially makes a replica of the data on the phone. There are other ways to obtain the requested data, like having the expert only search and pull information in relation to certain agreed upon terms. However, if something relevant is revealed during discovery phases that was not considered when the phone was first mirrored, the phone must be taken back to the expert to pull the additional information.

Some of the other services require the phone for multiple days or charge a fee for traveling to the site of the phone to complete the mirroring process. Whichever service you choose should be able to ensure there are proper chain of custody and security procedures in place, regardless of where or how the data is gathered.

Besides finding an appropriate service, you will also need to analyze the caselaw in the appropriate jurisdiction to flesh out what direction the courts have provided for requesting this type of discovery. You will also want to determine what type of foundation you need to lay concerning the retrieval process for admissibility purposes. If you're practicing in federal courts, you already know Fed. R. Evid. 902 has been amended to include data copied from an electronic device, storage medium, or file, as self-authenticating if recovered through appropriate processes.

Request

When serving a request for production for the cellphone and data you are seeking, it may be worth reaching out to your opposing counsel to discuss the details of the process. A system that seems most agreeable and cost effective is completely mirroring the phone at issue but then, throughout the life of the case, arguing over which terms are appropriate for providing to the forensic expert to search the data. When the forensic expert searches the data with the agreeable terms, they can provide the returned information to the counsel of record for the party whose data was searched. Counsel then has an opportunity to review the results and determine what must be produced.

If the case is of sensitive subject matter or you have an overly difficult opposing counsel, it may be worth requesting a special master for the limited purpose of overseeing disputes concerning searchable terms or returned data.

Collect

The amount of information that can be collected from cellphone data is astonishing. There are some Google

applications that run in the background of the phone and track the location of the device, regardless of whether GPS navigation is being used. Some processes can resuscitate deleted files and determine when files were created or modified. Forensics may be able to pull heart rate information from fitness applications or determine the last time a phone number was contacted. Browser history may be collectable from a certain date or timeframe. The list goes on and on. You can imagine just how helpful some of that information could be in picking apart your opposing counsel's case theory. Sophisticated e-discovery is not only useful in cases concerning thousands of emails or a network of corporate computers.

Having an inquisitive conversation with your forensic expert about the type of data you are seeking can also be incredibly helpful. Like most experts, they may be able to shed light on ways to obtain data that you would not have otherwise considered.

Cost

We have all heard the harrowing stories about the costs of e-discovery. It's even something the courts often discuss and consider. However, with advancements in technology, the process of mirroring and searching a cell phone (at least in a fly-over state like Missouri) can be done for around \$1,500.00. Of course, incurring this cost on behalf of your client may not be appropriate in every case, but with his type of information at your fingertips—the investment may be absolutely necessary.

Although these are seemingly elementary steps and perhaps old news to some, the hope is that someone may skim these steps and consider utilizing e-discovery to search for cellphone data in a way they had not considered before. There is an immense amount of information just waiting to be discovered in every opposing party's cellphone—it is time to dig it out.

Kristen W. Durant practices insurance defense with an emphasis in products and professional liability. Her background also consists of defending mass tort and toxic tort claims. The combination of the two has provided her with a foundation for tackling complex, detail specific allegations. Although mounting a creative and aggressive defense is what Kristen enjoys most, she has earned a certificate in early resolution training from the University of Missouri's top-rated ADR center to help her clients find mutually-beneficial and efficient solutions when the situation warrants. Kristen can be reached at kwagner@vanosdolkc.com.

Misplaced Weights?

Questioning *Daubert*'s Reliance on "Peer Review and Publication" after the *CrossFit, Inc. v. NSCA* Saga

By Lee M. Rudin



"Peer review and publication." Litigators often trot out this well-worn phrase to credit (or discredit) a purported expert. Why? Because it was one of several illustrative factors the U.S. Supreme Court espoused in *Daubert v. Merrell Dow Pharm., Inc.*, 509 U.S. 579 (1993) to test the validity of an expert's methodology ("whether the theory or technique has been subjected to peer review and publication"). Prompted by an unusual ruling out of Southern California, this article addresses whether the legal system has misplaced its dependence on "peer review and publication" as a sign of reliable science.

In *The Trouble With Medical Journals* (Taylor & Francis, 2000), author Richard Smith wrote: "[j]ournals rarely cause change directly, but ... *journals can have profound effects*. They might do this through *anything* they publish, but I'm particularly interested in cases where the journals may have behaved poorly." This idea of journals behaving badly – and the "profound effects" of such misbehavior – took center stage recently in Southern California's state and federal courts in the ongoing saga between competitors CrossFit, Inc. and the National Strength & Conditioning Association ("NSCA"). Long, tumultuous story very short: in November 2013, the NSCA published the "Devor Study" in its *Journal of Strength and Conditioning Research (JSCR)*, which included data that purported to show that CrossFit was 'dangerous.' Several publications, including *Outside Magazine* and *Military Times*, cited the Devor Study as evidence that CrossFit was, in fact, dangerous. The problem was, the data was false.

As a result, in May 2014, CrossFit sued the NSCA in federal court for false advertising, unfair competition, and declaratory relief. See *CrossFit, Inc. v. Nat'l Strength & Conditioning Ass'n*, 14-CV-1191 JLS (KSC) (S.D. Cal. May 12, 2014) ("*CrossFit, Inc. v. NSCA*"). In response, in May 2016, the NSCA sued CrossFit, Inc., its founder, and two employees alleging trade libel, defamation, and the use of unfair business practices. See *Nat'l Strength & Conditioning Ass'n v. Glassman, et al.*, 37-2016-00014339-CU-DF-CTL (C-73) (Cal. Sup. Ct. San Diego, May 2, 2016) ("*NSCA v. CrossFit, Inc.*"). Shortly thereafter, the federal judge

granted CrossFit, Inc.'s summary judgment motion and found the Devor Study's "injury data were in fact false[.]" *CrossFit, Inc. v. NSCA*, 2016 WL 5118530 at *9-11 (S.D. Cal. Sept. 21, 2016).

Relying in part on the Federal judge's ruling and the JCSR's editor's claim that the Devor Study had been "peer-reviewed" and that was "good enough," the state judge in *NSCA v. CrossFit, Inc.* ordered the NSCA to "unmask" the Devor Study's peer reviewers and reveal their names to CrossFit. *NSCA v. CrossFit, Inc.* (Jan. 18, 2018). In reaching this unprecedented decision, the state judge adopted the discovery referee's findings. (In California, an individual may be appointed as a referee to handle discovery disputes and report his findings back to the court. See, e.g., Cal. Code Civ. Proc. §§638, 639.) The referee relevantly wrote:

However, it is equally true that the lack of transparency regarding the identity of peer reviewers or the peer review process can undermine scientific knowledge, integrity, and trustworthiness. When there is evidence of fraud, the goal of scientific integrity is achieved through transparency, not through an impenetrable wall always shielding the identities of peer reviewers. *Accountability in the peer review process is as important to the integrity of that process as accountability is in social ethics*. To the extent that there is an impenetrable wall shielding the peer review process, there is no accountability. *Without the constraint of accountability[,], the peer review process can be corrupted and undermine the very scientific ideals the process espouses.* *** The lack of scientific rigor by the peer reviewers could cause society to question whether there was collusion or other corruption of the scientific process.

NSCA v. CrossFit, Inc. (Nov. 15, 2017), pp. 6-7 (emphasis added). The referee also concluded, in relevant part, that "...society's right to have a fair and unbiased peer review process outweighs the need to protect the identity of the peer reviewers in this instance." *Id.* at p. 10. Fast forward to November 2018; the NSCA asked the state court to dismiss its suit against CrossFit, Inc., *et al.* for "business" reasons. *NSCA v. CrossFit, Inc.* (Nov. 29, 2018). Then, in December

2019, after additional revelations of the NSCA's perjury and further discovery abuse, the federal judge issued a scathing opinion and granted CrossFit, Inc.'s motion for terminating and issue sanctions. *CrossFit, Inc. v. NSCA*, 2019 WL 6527951 (S.D. Cal. Dec. 4, 2019).

My suggested takeaway from the CrossFit, Inc. / NSCA saga is a general suspicion about the peer review and publication process and concern with the weight society and legal system place on it. It is well known that funding for many medical journals and institutions comes from industries with an *obvious* conflict of interest (a la the Sugar Association's influence over the National Institutes of Health or the Tobacco Institute's influence over just about everything in its heyday). This article is far from the first to sound the alarm on this. Just google "the problem with peer review" or "peer review corruption" and the results abound. *Science American*, the *New York Times*, the *Wall Street Journal*, and countless journals have written about how corrupted peer-review harms scientific credibility.

Back to CrossFit, Inc. and the NSCA—as this author sees it, the problem with the Devor Study was that it had been undeservedly blessed with perceived legitimacy *because* it was "peer-reviewed" and "published" in a journal. Not only did this misperception harm a business's reputation and bottom line, but it also misled the public and an untold number of individuals. The harm arising from the latter is incalculable.

In trial practice, experts play a critical role. Courts and counsel make strenuous efforts to keep "junk science" out of the courtroom by leaning, in part, on the perceived

credibility bestowed by "peer review and publication." The Federal court system and all but eight state court systems credit witnesses as being "experts" by asking, *inter alia*, if and where their methodology has been peer-reviewed and published, as if being so makes the methodology inherently reliable. But, if the very process that is supposed to help judges, juries, and lawyers (likely all non-scientists) tell what science is "junk" (or not) has been corrupted, then what?

Considering what we learned from the CrossFit, Inc. / NSCA saga, the question presented to the legal system is this: have we been going about it all wrong? If the integrity of the peer review and publication process can be compromised, then what of the "experts" who bolster their opinions with the same peer-reviewed, published literature? Taken one step further, if the process is inherently *unreliable*, then have we made a grave mistake by relying on it to assess whether an expert's methodology is *reliable*? The effects of this answer could truly be profound.

Lee M. Rudin is a New Orleans-based attorney with Staines, Eppling & Kenney, LLC, a boutique, full-service law firm in Metairie, Louisiana. He provides creative, cost-effective representation and advice across a variety of subject matters to local and international clients of all sizes, from individuals and small businesses to multi-national corporations. Lee previously represented CrossFit, Inc. and its related entities in litigation; however, they made no contribution to this article. Please feel free to contact Lee by email at lee@seklaw.com.

Leadership Note – The Chair's Corner

Planning for the Future

Young Lawyer Steering Committee Fly-In a Chance to Work on BIG Goals, and Get Sentimental

By Shannon M. Nessier



Nothing fills me with as much hope for the future of the Young Lawyers Committee (YLC) (and DRI for that matter) as the annual Steering Committee (SC) Fly-In meeting each year. It is the Executive Committee's best opportu-

nity to ask tough questions, set important goals, and get key buy-in from the current and future leaders of the YLC. It isn't any one thing that makes me leave the meeting beaming with optimism. Instead, it is the combined force of so many deliberate, thoughtful moments that remind me

how special this organization is, and how essential the YLC is to its continued success and advancement.

It starts from the minute the RSVP email goes out to the SC. From giving up time with family and friends, to re-arranging work schedules, I am routinely blown away by the investment and sacrifice my peers make to get themselves to the Fly-In meeting. But, as with any DRI event, just showing up is never enough! We also ask many of our SC members to speak, run sessions, and arrange events. So, on top of making time in their busy lives to be fully present at the Fly-In, many of the SC members are also planning special philanthropy projects, preparing to moderate meaningful discussion sessions, pulling together surveys for committee self-reflection, or arranging exciting networking activities to grow our relationships during our brief 30 hours together. Watching it all come together as the Fly-In approaches, and then living the experience with my DRI friends, has always been incredibly meaningful for me.

This year's Fly-In was as inspiring as ever, but also a little bittersweet, because as my Chair year continues to run down its clock, I know I won't be back in this spot again.

We had a spectacular opening night event at Punch Bowl Social—one of my favorite spots these days (well, the one near me in California). Where else can you discuss the trials of firm life, while beating your closest friends at shuffleboard, or get counsel on diverse lawyer struggles, while devouring the world's best chorizo and peanut fries? I loved our Friday night event so much. The mix of activities let everyone find their space. Too often, we forget to be kids, have fun, and just play. The event on Friday was a rare opportunity for us grown-ups to act like kids (and be vulnerable) with some of the people we trust most in our professional lives. It is hard for me to image a better lead up to our Saturday workday than that!

Saturday was not all work, but a pretty serious amount of heavy lifting by all involved. When we first started our year, Stephanie, Catherine, and I committed ourselves to making sure we didn't just deal with YLC logistics and DRI tasks at the Fly-In. We agreed to try, even with limited windows, to tackle real issues facing our profession and our friends.

So, we started the day with an exercise to look at implicit bias and ways to manage how we interact with people as a result. We know it was just one small look into how our biases shape our legal world, but it was a step we needed to take together. We hope our SC members will take back with they learned and be a voice in their own firms and

bars for better awareness of how such bias shapes our relationships.

We also tackled what it means to be a good leader. So many of the SC members are natural leaders, but we wanted to give them tools to assess how they lead, how they can improve their skills, and how to best use their natural talents. My favorite teacher in high school taught me to "work smart, not hard." In order to do that, you have to know what you are good at to leverage it correctly to make your life easier. We hope the leadership training gave people a better look at their skills, and how to make their lives easier as they slowly take over their firms, their legal communities, and of course, DRI, as the next generation of leaders.

Finally, we included a brief segment on business development. I have long believed that we need to get more blunt about what brings us all here. DRI is about making business connections and generating business opportunities. It is not something we should hide or shy away from. I am here to get business, I am here to get referrals, I am here to meet clients. I want us all to be OK saying that. Now, it just so happens that DRI and YLC let me do that while getting top-notch CLE credits, meeting people I love like family, and hearing thought-provoking talks from some of the world's foremost authorities. But, we need to make sure we have our eyes on the prize, so we spent some time talking about how to get the most out of our DRI investment. It is important to us that our members, who put so much of themselves into this organization, are getting great ROIs.

On top of these three presentations, we were so lucky to get thoughtful updates from our committees, to hear about the launch of the YL Seminar registration and brochure for our FIRST EVER visit to Atlanta this June 24-26, 2020 (sadly now cancelled), and to talk about all the amazing work being done by our members and all the work they want to tackle this year. With each person who spoke, I will confess I was getting a bit teary-eyed. To sit back and watch this amazing group of people who have already done so much work, sit around and plan how they can do more – well, it made me feel blessed to know them and to share this with them.

As I sit here, trying not to be sad that this will be my last Fly-In, I am focusing on my hope, my faith, and my pride in these amazing leaders of the YLC and DRI. Every generation hopes the next to have it better than they did. But, here, as I look ahead for the future of the YLC and DRI, I do not have to hope. With leadership like what we have on the horizon, and the heart and commitment of the SC, I am

certain that this Committee will only grow stronger, more impactful, and more essential to the lives of the members it serves. I am just honored I was counted in their number one last time.

Shannon M. Nessier is an experienced litigator at Hanson Bridgett LLP in San Francisco, who focuses on the defense

of product manufacturers, suppliers, and retailers as well as premises owners in personal injury and defective product/premises litigation. In addition, she provides advice and litigation defense on product and food labeling claims, Organic labeling issues under COPA, and Proposition 65 claims.

Membership Minute

DRI Friendship

By Emily Ruzic



Lawyers come to DRI (and the Young Lawyers Committee) for so many different reasons. Some are told to join by a more senior colleague. Others were intrigued by a firm-funded trip to Las Vegas or New York City or a few days away from the kids. Many want to grow their professional networks and meet other lawyers from across the country, or even world. They look to grow (or start) their book of business and develop referral sources. Some are here for the professional development opportunities like the outstanding programming and chances to speak or publish.

What people don't realize is that by the second or third meeting or event, DRI becomes a part of you, as much as you are a part of it. Many members block off seminar and annual meeting dates over a year in advance—for some, these dates are protected as much as birthdays, anniversaries, or vacations. More importantly, DRI connections become true friends. Last year, a committee member from Alabama married in the Bahamas, and guests included committee members from Texas and California, none of whom she had known before DRI. Earlier this year, committee members from Kentucky and South Carolina and their significant others met up in Las Vegas for a basketball game. We've seen our share of engagement and baby gifts or virtual champagne toasts for partnership announcements.

These friendships span the hard times too. When a DRI Young Lawyer unexpectedly had a stroke, committee

members were there for him. Later, when another committee member was diagnosed with cancer, the committee rallied around her, mailing cards and gifts and fundraising for new treatments. As recently as this month, we've cried together over the cancellation of the seminar, representing over a year of hard work by so many and one less time to gather together among friends. But we were friends when we came into this new time and we will stay friends throughout it and long after.

Even though we are confined to our homes, the friendship and camaraderie continue. If you haven't formed a group text among DRI buddies, now is a great time to start. Reach out to your friends for virtual happy hours or sign-up for the virtual gatherings hosted by the marketing team. Check on that member that lives alone. Moreover, DRI has great online resources for wellness, work-life balance, and mental health. We will get through this, together, as friends. I can wait to see everyone in-person in Washington D.C. in October!

Emily Ruzic is a commercial litigation associate in the Birmingham, Alabama office of Bradley Arant Boult Cummings LLP. She is a member of the DRI Young Lawyers Steering Committee, currently serving as Co-Chair of the Membership Subcommittee. Emily can be reached at eruzic@bradley.com.

Timeout for Wellness

What Measures Should Employers Implement to Ensure a Safe Working Environment in Response to COVID-19?

By Kelly Ferrell



Employers across the country are navigating concerns regarding the effects of COVID-19 in the workplace, including what measures should be taken to ensure that they have provided their employees a safe work environment? This question is highly relevant to the General Duty Clause, Section 5(a)(1) of the Occupational Safety and Health Act of 1970, which requires employers to furnish each worker “employment and a place of employment, which are free from recognized hazards that are causing or are likely to cause death or serious physical harm.”

Although there is no specific OSHA standard covering COVID-19, it is prudent for employers to review the guidance set forth by the Centers for Disease Control (CDC), the Equal Employment Opportunity Commission (EEOC), and the Occupational Safety and Health Administration (OSHA) to make sure that they have implemented proper health and safety measures to protect employees against COVID-19.

Key recommendations from each of the foregoing agencies are summarized below:

1. Actively encourage sick employees to stay home.

- Employees who have symptoms of acute respiratory illness should stay home until they are fever free without fever-reducing medicines.
- Employers may take the body temperature of employees. Although measuring an employee’s body temperature is a medical examination, which is generally prohibited under the Americans with Disabilities Act (ADA), due to CDC and state/local health authorities’ concerns of community spread of COVID-19, such temperature monitoring is currently permissible for COVID-19 prevention.
- Ensure sick leave policies are flexible and that employees are aware of these policies.
- Do not require a healthcare provider’s note for employees who are sick with acute respiratory illness to validate

their illness or to return for work, because healthcare offices and medical facilities may be extremely busy.

- Maintain flexible policies that permit employees to stay home to care for a sick family member.
- Be aware that employees with disabilities that put them at high risk for COVID-19 complications may request telework as a reasonable accommodation under the ADA.

2. Implement social distancing.

- Explore whether flexible worksites (telecommuting) and flexible work hours (staggered shifts) can be implemented to increase the physical distance among employees. You may also consider establish alternating days or extra shifts that reduce the total number of employees in a facility at a given time, allowing them to maintain distance from one another while maintaining a full onsite work week
- To the extent possible, individuals should maintain a 6-foot distance from one another.
- Discourage sharing phones, desks, offices, and equipment.
- Minimize contact among workers, clients, and customers by replacing face-to-face meetings with virtual communications.

3. Separate sick employees.

- Employees who appear to have acute respiratory illness symptoms (cough, shortness of breath) upon arrival to work or become sick during the day should be separated from other employees and sent home immediately.

4. Emphasize respiratory etiquette and hand hygiene.

- Place posters at the entrance of the workplace and in common areas that encourage staying home when sick, cough/sneeze etiquette, and hand hygiene.

5. Provide cleaning products and perform routine environmental cleaning.

- Provide tissues and no-touch disposal receptacles.
- Instruct employees to clean their hands often with alcohol based sanitizer or soap and water for at least 20 seconds.
- Provide soap and water and alcohol-based sanitizer
- Routinely clean all frequently touched surfaces.
- Provide disposable wipes so that commonly used surfaces can be wiped down.

6. Encourage self-reporting.

- Inform and encourage employees to self-monitor for symptoms.
- Provide workers with up-to-date education and training on COVID-19 risk factors and protective behaviors (e.g., cough etiquette).
- Develop a policy for employees to report when they are sick or experiencing symptoms of COVID-19.
- If an employee has a family member who has been diagnosed with COVID-19, the employee should notify their supervisor.

- If an employee is confirmed to have COVID-19, employers should inform fellow employees of their possible exposure to COVID-19 in the workplace but maintain confidentiality as required by the ADA.

During this time it is also prudent for employers to remember that even if an employee does not have a medical reason for self-quarantining, but has a reasonable belief that reporting to work would pose an imminent and serious danger to the employee's life or health, the employee cannot be retaliated against for voicing their concern. 29 C.F.R. §1977.9(c) (good faith complaints to employer about occupational health and safety are protected activity under the OSH Act). By implementing the foregoing preventative strategies, employers can actively mitigate against workplace health and safety concerns.

Kelly Ferrell is a commercial litigator, with a focus on employment litigation, at Porter Hedges LLP in Houston, Texas. Her employment litigation practice includes representation of clients in cases involving the FLSA, discrimination claims, misappropriation of trade secrets non-compete and non-solicitation agreements, executive pay disputes, and breaches of employment agreements. Kelly also consults with clients on pre-litigation employment matters, including employment agreements, handbooks and policies, terminations, and employee compensation.

News & Announcements

Have Good News to Share?

Have you or one of your fellow young lawyers recently received an honor, a promotion, or a defense win? Do you have any announcements for DRI Young Lawyers? Please contact the Editors, **Darin M. Williams** (dwilliams@laner-muchin.com), **Natalie Baker** (nbaker@mrchouston.com), **Ashlyn Capote** (acapote@goldbergsegalla.com), **Carmen Weite** (cweite@friedman-lawyers.com)!