



Raising the Bar

The newsletter of the
Young Lawyers Committee

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Feature Articles

Legislative Update: What Does COVID-19 Mean for Future Litigation?

By David C. Vaughn IV



As we all grapple with COVID-19 in our personal and professional lives, the question will be asked, what claims will arise from the crisis? How will COVID impact claims? What kinds of claims are going to be filed over these next few years? These daunting questions are perhaps impossible to answer without a crystal ball. However, lawmakers have already begun to debate and pass legislation that could illuminate the cases that will be filed now and in the coming years.

The Federal Government looks to take the lead on COVID-19, as many lawmakers debate whether to include liability protections in the next COVID-19 stimulus package. Hundreds of plaintiffs' organizations have lobbied against any legislation that would provide immunity for businesses that operate in an "unreasonably unsafe manner, causing workers and consumers to risk COVID-19 infection." However, some lawmakers argue a "reasonable" protection could allow business to reopen without the threat of frivolous litigation. These protections may extend broadly or be tied specifically to certain professions, such as front-line health care workers. Amanda Bronstad, *As Businesses Reopen, Lawsuits Loom Over COVID-19 Exposure*, Law.com

(May 1, 2020), <https://www.law.com/2020/05/01/as-businesses-reopen-lawsuits-loom-over-covid-19-exposure/#>.

While this debate rages in Washington, states around the country are passing laws that provide immunity against certain COVID claims for individual professions. New York is one of fifteen states that has offered limited immunity in the healthcare field. On April 3, 2020 Governor Andrew Cuomo signed into law The Emergency Disaster Treatment Protection Act. This Act temporarily immunizes health care facilities and professionals from civil liability from negligence claims related to COVID-19. It does not provide immunity for willful or criminal misconduct or gross negligence. It does appear to cover any claim arising from shortage in staffing or protective equipment. Health care providers argue that this protection was necessary, given this was an unforeseeable outbreak that was extremely difficult to prevent. However, critics argue nursing home facilities should not have been included as a protected healthcare provider in this Act. Amy Julia Harris, Kim Barker and Jesse McKinley, *Nursing Homes Are Hot Spots in the Crisis. But Don't Try Suing Them*, New York Times (May 13, 2020), <https://www.nytimes.com/2020/05/13/nyregion/nursing-homes-coronavirus-new-york.html>.

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The plaintiffs' bar argues these lawsuits against nursing homes do not involve the unforeseeable COVID-19 crisis, but instead a failure to follow protocols in containing infection outbreaks. They state an infectious outbreak was a known risk in a nursing home prior to COVID-19. Further, plaintiffs' attorneys argue that these legislative changes cannot be applied retroactively. Amanda Bronstad, *As Businesses Reopen, Lawsuits Loom Over COVID-19 Exposure*. Law.com. (May 1, 2020), <https://www.law.com/2020/05/01/as-businesses-reopen-lawsuits-loom-over-covid-19-exposure/#>. These debates will be important to follow as more and more state houses are reconvening to decide whether to give broad, limited, or no protections to certain businesses. These arguments, and any early court rulings on these statutes, should give lawmakers guidance when writing laws so that they can effectively carry out their intended purpose.

In addition to limiting litigation related to COVID-19, New York law makers have also proposed legislation that would require insurance companies to expand business interruption coverage to cover losses due to COVID-19 this past year. This proposal has faced harsh scrutiny, particularly because the statute would retroactively alter the contractual terms between businesses and insurance companies. Massimo F. D'Angelo, *COVID-19 Relief Legislation Tests Constitutional Limits*, New York Law Journal, (May 26, 2020), <https://www.law.com/newyorklawjournal/2020/05/26/covid-19-relief-legislation-tests-constitutional-limits/>.

The federal government could pass legislation that avoids these concerns by providing comprehensive coverage for any *future* pandemics. This legislation would provide up to \$750 billion dollars in taxpayer funds to pay insurance companies for lost revenue during future pandemics. However, this would require insurance companies to pay \$250 million in losses, prior to receiving money from the federal government. In response to this bill, companies argue that pandemics are "inherently uninsurable." The proposed legislation gives insurance companies the option to participate in this plan. Lawmakers admit this bill would face trouble passing, but they hope it is the impetus to legislation being drafted with the support of the insurance industry. Suzanne Barlyn, *U.S. Lawmaker Wants Insurers, Gov't to Share Future Pandemic Business Losses*, Reuters, (May 26, 2020), <https://www.reuters.com/article/us-health-coronavirus-insurance-pandemic/u-s-lawmaker-wants-insurers-govt-to-share-future-pandemic-business-losses-idUSKBN2322Z2>.

No matter the outcome of these debates, a large amount of cash will be flowing between the government and entities in various fields. This cash influx will create an opportunity for new lawsuits. The Department of Justice is starting to crack down on small businesses that have fraudulently misused federal loans provided by the Coronavirus Aid, Relief, and Economic Security Act. Experts believe health-care providers are next on the Department of Justice's list. In addition to criminal complaints, healthcare providers will likely face a wave of civil lawsuits alleging they received a bailout they did not need or spent the money they received frivolously. These claims could be brought under the False Claims Act, and every entity that received money from the federal government susceptible to these allegations. Watchdogs say that fraud and abuse is unavoidable, given the amount of cash influx that has just been injected into the economy. Businesses should be aware that this cash has strings attached and several parties will be waiting in the wings if they believe they can pull those strings. Lydia Wheeler, "Wave of Whistleblower Suits Predicted Over Virus Relief Aid," Bloomberg Law (June 1, 2020), <https://news.bloomberglaw.com/health-law-and-business/wave-of-whistleblower-suits-predicted-over-virus-relief-aid>.

One thing is certain, lawsuits are coming. Several lawmakers at the national and state level hope to keep these lawsuits out of the courtroom. These protections could be part of a larger attempt to have industry come to the table and craft legislation that protects Americans now and in the future. However, these laws will have their constitutionality tested and some lawyers will look for ways to file claims without invoking these protection statutes. Even if a business is located in a state where COVID-19 claims are limited, yet took bailout funds, this business is at risk of a whistleblower suit. These suits could prove costly if businesses do not follow stipulations attached to the bailout money received by the government.

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A Litigator's Guide to Remote Learning During COVID-19

By Madeline Dennis, Scott Hunsaker, Matthew Bown, and Andre Webb



Looking for quality resources to help

you stay sharp in your practice area amidst the COVID-19 crisis? While we await eagerly a time when we can attend DRI seminars in person again, DRI offers a plethora of convenient tools to help keep you “in the know” from the comfort of your home. From live and recorded podcasts and webinars to the DRI Coronavirus Resource Center, DRI has you covered. This article provides a brief overview of some of the resources at your fingertips.

DRI Coronavirus Information Center

The DRI Coronavirus Information Center, located under the “About DRI” tab on the main website, contains a range of resources to help navigate the COVID-19 crisis. It lists online networking opportunities and provides guidance for working remotely. It also maintains up-to-date links to relevant federal legislation, regulatory information, state and federal court information, state stay-at-home orders, and news stories to help better serve clients in the midst of ever-changing deadlines and circumstances.

LegalPoint

LegalPoint is described as “a members-only service providing DRI members with exclusive access to a vast online library of DRI articles, books and materials,” but it’s much more than that. Beginning your research with Legal Point can help focus the lens on the primary issues at hand. After performing a search, you can filter results by the type of publication such as committee newsletters, course materials, *For The Defense* articles, and more. Access to high quality written materials such as these at your fingertips is invaluable.

Pathways to Partnership

DRI’s Pathways to Partnership is a webinar series consisting of six webinars presented by some of DRI’s finest leaders. The series is designed to help mid-level or senior associates and counsel learn how to progress to partnership and manage the responsibilities that come with partnership.

The series provides a wealth of information to better understand how to make partner and excel in the position.

Webcasts and Podcasts

Whether you like to listen and learn or watch presentations, DRI provides ample programming specific to a wide variety of practice areas. Sharpen your substantive skills while earning CLE. Search by practice area on DRI’s website at <https://digitell.dri.org/dri/pages/specialty>.

Here are a few featured upcoming or past programs:

Commercial Litigation

Attorneys’ Fees Awards for the Successful IP Litigant (April 30, 2020). Join DRI Member Brian K. Brookey with Tucker Ellis LLP for a discussion of the legal standards governing fee awards in patent, trademark, copyright, and trade secret cases, strategies for setting up your case so that when you win the court will be more likely to award fees and practical tips for maximizing the size of an attorneys’ fee award.

Drug and Device Law

Preemption in Drug and Medical Device Cases: An Overview and Hot Topics (June 20, 2019). Learn the basics of federal preemption in drug and medical device cases, how to strategically raise the defense in a variety of forums and stages of litigation, and recent developments in drug and medical device litigation including changes to the FDA’s 510(k) clearance program.

Employment and Labor Law

Plan Now (Part II): Law Firms and Client Post COVID-19 Operations as the Economy Re-Opens (May 6, 2020).

Part I of this webinar series covered legal and practical considerations businesses and law firms should consider in developing a return-to-work plan. Part II addresses the next steps. What legal and operational constraints are law firms and clients facing? How should law firms and clients partner in new ways in the post-COVID-19 era? Hear from firm leaders across the nation on these topics and more.

Insurance Law

Law Firm Business Interruption Claims: Point-Counterpoint (June 16, 2020). Are law firms entitled to insurance coverage for their lost revenue due to the COVID-19 health crisis? Hear from both sides as DRI members Jonathan L. Schwartz (Goldberg Segalla) and Rick Hammond (Helpler-Broom, LLC) impart the position of insurance carriers while DRI member Mary C. Calkins (Blank Rome LLP) takes up the cause of the policyholder.

Litigation Skills

Effects of the COVID-19 Crisis on Jurors' Attitudes and Decision-Making (June 10, 2020). Learn about the effects of the COVID-19 crisis on jurors' attitudes, beliefs and decision-making processes; jurors' willingness to consider different perspectives; and implications for reptile and anti-reptile approaches.

Remote Advocacy (June 22, 2020). This program will address best practices in remote advocacy, including appearances at depositions, hearings, and trials. The program will also show the pitfalls to avoid in the remote world, including prior exchange of exhibits, preparing witnesses, coordinating with opposing counsel, and technological considerations.

Medical Liability and Health Care Law

COVID-19: Current State of Immunity and Potential Liability for Healthcare Providers (April 30, 2020). Learn about immunities offered to healthcare providers within federal and state orders; temporary amendments to regulatory provisions; and a forecast regarding litigation that can be expected as a result of the COVID-19 crisis.

Trucking Law

Cross-Examination of the Plaintiff's Trucking Safety Expert: Eight Steps to Neutralize One of Your Biggest Threats (Jan 22, 2020). Learn from experienced trucking lawyers the best ways to prepare and take the plaintiff's accident re-constructionist deposition. Learn how to challenge and attack the plaintiff's expert credibility, and use the plaintiff's accident re-constructionist to establish opinions favorable to the defense.

Conclusion

While the ways in which we learn and grow as attorneys has changed over the past few months, our ability to do

so has not. These are only a few examples of the many online educational resources that DRI has consistently provided over the years and will continue to provide in the months and years to come. As always, we encourage you as DRI members to take advantage of the vast wealth of knowledge that your co-members have contributed, and to grow that resource by sharing your own experience and knowledge with our community.

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Articles of Note

Six Tips for Promoting Diversity and Inclusion During the Pandemic and Beyond

By Jeffrey Jones and Natalie Baker Reis



As the country navigates through the pandemic and grapples with what the next several months have in store, law firms and their clients have become justifiably

concerned about the uncertain future. But as attorneys prioritize and manage many competing agendas during this challenging and unusual time, it is crucial that law firms remain committed about maintaining their diversity and inclusion initiatives.

The following are recommendations for ensuring that diversity and inclusion programs remain strategic imperatives during this time of significant change:

Keep Diversity & Inclusion Efforts a Top Priority

Diversity and inclusion (D&I) programs should have an assigned, dedicated champion and budget. This will support the successful achievement of the goals and milestones set by your D&I leadership. By enforcing compliance with the existing programs in place, all the firm's hard work and positive progress accomplished before the pandemic will continue.

For those firms that do not have a D&I program in place, now is a great time to develop one. After all, diverse perspectives and experiences can contribute positively to a law firm's success not only from an internal standpoint but from an external one as well. In fact, implementing diversity and inclusion programs can lead to a firm's increased economic growth, in part due to its ability to attract a wider network of attorney recruits and potential clients.

Consider the Effect of Decision Making on Diversity & Inclusion Commitments

As firms make changes to staff, compensation, and key assignments, the choices made could have a disparately, negative impact on women and minorities, ultimately disrupting diversity efforts in the process. As such, law firms must remain vigilant to put in place a fair and equitable system that protects against any unconscious bias.

Plan to Communicate Frequently and Inclusively

With team members working remotely, lawyers from underrepresented groups may feel especially isolated. To address this, firms can make sure their communications are frequent and inclusive and keep everyone involved and engaged. Simple strategies include keeping team members copied on emails or inviting them to participate as active or passive listeners on strategic calls. By equitably sharing information and proactively encouraging access to this information, firms help bolster morale, reduce uncertainty, and make team members feel valued—all of which is vital to the firm's culture and ultimate success.

Actively Maintain Relationships

With social distancing mandates and stay-at-home orders in place, people may understandably feel isolated and uncertain. Making a concerted effort to develop or maintain existing relationships is key to cultivating a culture of inclusion. Measures include checking in to ask how team members are doing—not just on-the-surface checking in to chat about their workload but reaching out to show genuine care and concern. This is a terrific opportunity to help establish or reaffirm a sense of belonging. Another way to actively maintain relationships during this time is to continue coaching and mentoring team members with their specific professional development goals or current challenges. Text, video chat, and phone calls are all ways to show support virtually and to continue to create inclusion amongst the team.

Show Appreciation to All Team Members

Create inclusion—and ultimately, a more cohesive team—by giving thanks and showing gratitude. When team members are solitarily billing hours in the confines of their own home, they can feel forgotten. We need to remind our colleagues how thankful we are for their hard work. In doing so, be specific in that expression of gratitude and give thanks for their efforts on certain projects or assignments. By expressing gratitude, we demonstrate our appreciation and communicate how much we value each one of our team members—regardless of gender or color.

Demonstrate to Clients that Diversity & Inclusion Remain a Priority

The pandemic will not change client expectations for diverse representation among their outside counsel. Consider sending an email to clients stressing your commitment to Diversity and Inclusion and include an update regarding current initiatives, priorities, metrics or achievements. An increasing amount of in-house counsel are diverse individuals themselves. Cutting back on D&I efforts at this time may send the wrong signal to certain clients, prospective clients, and the industry at large.

As we continue to experience major personal and professional changes, championing diversity and inclusion and making D&I programs a priority during the transition will protect the positive advancements of recent years and

play a critical role in building an improved post-pandemic future.

Jeffrey Jones has supported in-house and outside counsel on enterprise software implementations, mergers and acquisitions, and various aspects of complex commercial litigation for over six years. He helps lead business development and marketing efforts at Medical Research Consultants (MRC), a certified women-owned business that specializes in record retrieval and nurse review services. Jeff can be contacted at jjones@mrchouston.com.

Natalie Baker Reis, a former practicing attorney, also helps lead business development and marketing efforts at MRC and is Co-Editor of the Young Lawyer's Raising the Bar publication. Natalie can be contacted at nbaker@mrchouston.com.

Transitioning from Junior to Senior Associate

By Nicole M. Stewart



The transition from junior to senior associate is an exciting but often stressful part of a young lawyer's career. As a senior associate, you no longer just take assignments and direction from a partner—you are often tasked with developing overall case strategy, communicating with clients, managing junior attorneys and staff, and generally taking on more responsibility. By this stage, we all know the importance of strong writing, research, and communication skills. But other than excellent technical skills, what does it take to succeed as a senior associate? I spoke with mentors, peers, and partners to get their best advice on transitioning to this new level of practice.

Remain Curious About the Practice of Law

As young associates, many of us learned about the practice of law by observing others with more experience, even if that meant working extra hours or volunteering to take on non-billable work. As we transition into senior associates and grow more comfortable in our practice, it can be easy to slip into a routine and forget how many learning opportunities are still available to us if we just make time for them. As a senior associate, this may translate into doing many of the same things we did as bright-eyed young attorneys, eager to learn through observation—things like

listening to a new client call just to hear how an experienced partner explains case strategy, watching a partner's oral argument in court, or using non-billable time to sit in on the deposition of an expert witness. Making a point to continuously develop your practice, even if it means having to make up for lost billable hours, will undoubtedly help you grow as an attorney. I like to remind myself that our work is called "the practice of law" for a reason—it's a profession in which we should continuously remain curious and strive to develop new skills as a lawyer. Don't hesitate to seek out opportunities that allow you to observe and learn from some of the best in your firm.

Continue to Foster Relationships with Your Mentors and Peers

If your experience was anything like mine, the importance of finding a mentor was drilled into you as a law student and young lawyer. Hopefully, by the time you reach senior associate level, you will have found a circle of peers and mentors who can offer advice, provide practice pointers, connect you with other attorneys and opportunities of interest, and generally serve as a sounding board for questions (or complaints) about the legal profession. "Mentors remain important at every stage of professional

life as the lawyers' abilities grow and our needs and our focus change," Louise A. LaMothe, former chair of the ABA Section of Litigation, said in a 2018 article about the importance of mentoring for women in the legal profession. *Mentoring Circles Pay Off for Women in the Legal Profession*, ABA (May 2018), <https://www.americanbar.org/news/abanews/publications/youraba/2018/may-2018/mentoring-circles-pay-off-for-women-in-the-legal-profession/>. If you haven't found a mentor yet, don't hesitate to reach out to a lawyer you admire and ask if they'd be willing to meet for a cup of coffee (or, in these COVID-19 days, possibly just a chat on the phone). You also may find lawyers you connect with through your local bar organizations or programs like [Ladder Down](#). If you already have a mentor, set a reminder to connect with them once a quarter—even if it's just an email to check in and ask how they're doing. Per my first point, above, the goal is to continuously learn as you advance in your career, and connecting with a mentor is one of the best ways to do so.

Share Your Wisdom with Junior Associates

One of the hardest parts of being a young lawyer is figuring out how to work with a handful of partners, each with their own preferences for how you should handle an assignment and generally function as an associate. It takes time and experience to learn the small but often important idiosyncrasies of successfully working with different partners—like which partner likes his drafts printed versus which wants hers emailed; which partner prefers that you schedule a meeting versus just dropping by their office; or which partner can't stand the use of "as" in place of "because." These may seem fairly unimportant in the grand scheme of practicing law, but they often add stress to the already stressful situation of being a new associate. As a more senior associate, you have likely learned certain tidbits of information that can make a world of difference to a young associate. Don't hesitate to share that wisdom with your peers, who can use it to avoid small mistakes and build rapport with their partners. This shared wisdom also applies to law firm culture, which can often be difficult to navigate as a new associate. If your experience has taught you the unspoken rules of successfully working within your firm, don't be afraid to pass along that information to your peers.

But also, Share Your Mistakes!

Mistakes can be embarrassing and humbling—two emotions we don't typically like to share with those outside of our inner circle. But sharing your mistakes helps others

learn how to avoid repeating those same mistakes and, just as importantly, shows your junior peers that you don't need to be perfect to succeed. As author and vulnerability researcher Brené Brown, Ph.D., LMSW, says in her Netflix special, *The Call to Courage*, "When we build cultures at work where there is zero tolerance for vulnerability, where perfectionism and armor are rewarded and necessary, you can't have [difficult] conversations." Discussing your mistakes and the lessons you've learned from them requires vulnerability, but it also opens the door for the type of productive communication necessary for a workplace to thrive. If a junior associate feels like they can approach you with a problem because they know you have navigated a similar issue in the past, you're more likely to find a solution before it can cause any damage. "Giving feedback, receiving feedback, problem solving, ethical decision-making—these are all born of vulnerability," Dr. Brown says. And this type of open communication—regardless of the subject matter—ultimately benefits everyone in the workplace.

Be Kind

Above all else, be kind. As you transition to senior associate, don't forget where you were just a few years ago—a junior associate trying their best to navigate a challenging new career, understand their firm's unspoken culture, and balance the demands of life outside of the office. Showing empathy toward your coworkers, particularly during stressful situations, is not just important for humanitarian reasons; it also benefits the bottom line. According to the Harvard Business Review, companies that prioritize empathy and emotional intelligence outperform their more robotic rivals by 20 percent. Being kind is always important, but perhaps now more than ever with our current socioeconomic climate.

I couldn't possibly cover every piece of advice in this article, so if you have additional pointers on the transition to senior associate, please share them in the DRI Young Lawyers listserv or by emailing me directly.

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Leadership Note

The Chair's Corner

By Shannon M. Nessler



"In a racist society, it is not enough to be non-racist, we must be anti-racist." – Angela Y. Davis

This month's chair's corner follows up on a post I did back in early June to our Communities page after the death of another unarmed Black person—George Floyd—and the protests that followed. So much has happened since then. But, also so little has changed. Along with DRI, which has put together some powerful content on these issues, we hope these events and posts are just the beginning of a growing, continuing, and evolving back-and-forth between our members on what it means to be advocates in today's America, and how we, as lawyers, can live our lives and practice our craft, while making the world a more just place.

I am not an expert on these topics, I have no claim to firsthand knowledge of these terrifying and bigoted experiences, and I cannot do justice to these complex issues in this small space nor from my position of privilege. But, as the chair of the Young Lawyers, I must not waste any opportunity to leverage this position's platform to amplify Black voices, issues, and concerns.

In a society where Blackness is stigmatized, racist ideas pass as normal in the media, culture, social systems, and institutions. This racism is destroying generations of Black men and women, not just those suffering violence directly, but those who experience the trauma of having been its witnesses and its targets. Our cities are in chaos, suffering unrest and deep, painful wounds that grow worse by the day, because unchecked and pervasive injustice is 100 percent in conflict with a peaceful society.

So, today I want to highlight this question, which has been echoing in the media of late: Why aren't we all anti-racist?

While conventional diversity efforts in the legal field focus on engagement and belonging, today's traumas require us to go far beyond that. We are talking about centuries-long dehumanizing injustice and racism.

Last night (now more than a month ago), I watched Senator Booker weep at the dais in the Senate as he begged his colleague to allow the passage of an already unanimously approved anti-lynching statute. He wept in

real and tangible pain and sadness for his ancestors, his colleagues, and himself. He was exasperated from working so hard, and for so long, to try to secure the most basic of decrees from a body of white colleagues, that to lynch a person is to do a crime of special heinousness. The sheer act of having to beg to have lynching made criminal broke a piece of him—and it should break a piece of all of us.

It is time to do more than just be (or think we are being) "not racist" ourselves; it is time, and well past time, to pick up our tools and get to work on affirmatively chipping away at systemic and intuitional racism by being anti-racist. Being anti-racist means we must acknowledge and understand our privilege, work to change our internalized racism, and challenge racism when we see it.

And so, we must be critical about the things we do or refrain from doing, we must seek guidance along the way, and we must be willing to stand up to racial injustice when we see it, and say, "No more." Those Portland Moms are showing us how it is done. It will be hard, you will feel guilt and shame at times, you will feel like an outsider and unwelcome at times, you will be scared at times, and you will be in danger at times. But, our friends and colleagues of color have had it hard *all along*, have been told to feel guilt and shame *all along*, have been outsiders and unwelcome *all along*, have been scared *all along*, and have been in danger *all along*—isn't it time we were at the least, the very, very least, there with them?

Below are some ideas—they are not perfect, they are not complete, and they are not right for everyone. But, they are ideas about where to start in committing yourself to becoming anti-racist. They come from a great number of sources and places, and those folks will be noted below. Use them, modify them, find your own way—but find *some* way to do what these times call for.

- 1. Do not sit on the sidelines and be silent.** Letting fear of making a mistake allow you to stay silent is cowardice. No one has the magic words to cure others' lifetimes of pain, allay their well-documented fears, or undo systemic racial atrocities in one instant; they do not exist, so stop letting perfect be the enemy of the good. You are a leader—in your family, your friend circle, your church, your firm, your community—and it is a leader's responsibility to speak *for* the marginalized

and *against* oppression. Dr. Martin Luther King pulled no punches: “In the end, we will remember not the words of our enemies, but the silence of our friends.”

2. **Do not act until you listen, read, inquire, learn.** Ok, there are no magic words, but that is not a license to just wing it and hope for the best. People talk all the time about avoiding “coming off tone deaf,” but a better plan is to just not BE tone deaf. The only way to be aware of the many pitfalls of this complex discourse you are navigating is to voraciously learn: books, blogs, podcasts, articles, posts. Read as much as you can to inform yourself. And, look to authors of color for your material—not just because you need to hear their perspective, but because then you can amplify those authors.
3. **Don’t look to “well, actually” the Black experience.** Conversations about racial injustice often lead to people getting defensive. But, the need to defend one’s self, one’s city, one’s world view, is not productive, and it makes you the star of this narrative (a real no-no, see #5), and it diminishes the experiences and suffering of the person who has been victimized. So, let’s look for compassion and empathy, not justifications. Let’s stay focused on the injustice, and not get distracted by counter narratives. And, let’s give witness to people sharing their pain, and not seek to educate them from our house on this hill.
4. **Don’t assume all people of color feel the same.** Facing scenes like we have encountered this week (mind you part of daily life in America while Black), we tend to fall back on generalizations. But, while members of the same race, gender, orientation, or other diverse space often have shared experiences, the uniqueness of each person’s experience must be acknowledged. We have to stop casting people in the “all other” or “all same” boxes. Ask your friends, colleagues, relatives of color about their *individual* experiences. Think about how you can create a space where they can discuss their experience without feeling like a spokesperson for their whole identity group.
5. **Do not put yourself in the narrative.** Karen, this is *not* about you. You do not need to share a time you suffered so your Black friend will know you “get her suffering” because this is not about you. You do not have to seek validation of your race education credentials by telling people how much Ta-Nehisi Coates you have read, because this is not about you. You do not have to explain how you have a Black [insert relationship here] to prove that you are an ally, because

it is not about you. What you have to do instead is listen—listen to your friends’ suffering and say you are sorry, keep reading and leaning about individual and systemic racism for your own knowledge, and forget about calling yourself an ally, *just go be one*.

6. **Express (then show) your sorrow:** Avoid expressions like “I am shocked,” “I am at a loss for words,” or “I cannot imagine what this must be like.” These are expressions of your privilege, they affirm the person’s feelings of otherness, and they help no one. Instead, say, “I am sorry,” be witness to their feelings of shock or paralysis or horror, and when they have been given the space to feel, to speak, to grieve, ask, “How can I help?” After that, it is easy—give the help that is asked of you, not the help you wish to impose.

I want to end as I did in the Communities page, with some lists, more options for self-study, activism, and places to put your money (and your time) to help effect change. These are like before, borrowed from websites, articles, social media posts, friends, family, and the news.

- **Read:**

- *They Can’t Kill Us All*, by Wesley Lowery
- *Your Silence Will Not Protect You*, Audre Lorde
- *Full Dissidence*, Howard Bryant (for my sports lovers)
- *Me and White Supremacy*, Layla F. Saad
- *Stamped from the Beginning*, Ibram X. Kendi
- *When They Call You a Terrorist*, Patrisse Khan-Cullors and Asha Bandele

- **Donate:**

- [National Police Accountability Project](#)
- [Black Girls Code](#)
- [The Marshall Project](#)
- [Dream Defenders](#)
- [Black LGBTQIA+ Migrant Project \(BLMP\)](#)
- [Black Youth Project 100](#)

- **Daily Life Changes for a Difference:**

- **Support Black owned businesses.** Every day, websites and newspapers are publishing lists of local / regional Black owned businesses. Use them, spend at them. And, not just this week or this month or this year. For good, forever. Commit to that. There are also websites to help more nationally: [WeBuyBlack](#)

and [The Black Wallet](#), to name just two. Google will find you even more.

•**Gift for diversity:** The next time you donate books to a school, toys to a holiday drive, or money to your alma mater, make the choice to focus your giving on race issues and diversity. Donate books by and about people of color. Donate toys that reflect the diverse world, from dolls of varied skin tones and puzzles of spots around the world, to music boxes that sing in Spanish and fair-trade items that teach the value of paying labor fairly. Donate to your favorite colleges, but earmark the money to diversity studies, or diverse admissions and scholarships. Keep doing all

the good you already do, but help turn it towards racial justice.

Shannon M. Nessler 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.

DRI Young Lawyers Member Spotlight

Michele Hayes



How and why did you first get involved with DRI?

I first got involved with DRI when I attended the insurance coverage conference in December of 2016. My firm encouraged DRI membership and attending conferences to network. After attending the conference, I knew DRI would be a great fit for my professional growth. Each conference since then I have continued to meet attorneys who remind me of what a great organization it is.

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

I am most interested in the Women in the Law Committee. Practicing commercial litigation, most of my opposing counsel are older men. I think it's important to focus on promoting more diversity in our field whether its gender, race, or ethnicity.

What is your favorite part about being a lawyer?

I love advocating for my clients. My position gives me the ability to hear their problems and seek out creative solutions to resolve their cases while being the least disruptive to their daily business as possible.

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

I am a certified yoga and bootcamp instructor. I love teaching fitness classes and spending time outdoors.

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

One case that will always stand out was my first motion for summary judgment that I won during my first few months practicing law. Plaintiff's counsel appealed the ruling to Maryland's appellate court where a year later I won again. It was an important defense ruling for engineers in the State of Maryland and I will always remember it as my first appellate oral argument.

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

The importance of putting client service first. I was taught to constantly think about whether your actions are best serving your client's goals. It has certainly helped me when dealing with opposing counsel who want to put up needless roadblocks that act as distractions from my client's main goals.

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

A Washington Capitals game during the playoffs the year we won the Stanley Cup! The energy in the crowd made the game that much more fun.

What was your very first job?

I worked for Bethesda, Maryland's non-profit partnership, and gave out restaurant recommendations and directions to tourists. I wore a shirt that said, "Ask me" and answered questions about the area.

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

If you are visiting Baltimore, you have to get something crab related! Faidley's is known for having the best crab cakes. Most of the restaurants in the area have some kind

of crab-related dish—crab dip, crab pretzels, and even crab nachos.

Michelle Hayes is an associate in the Litigation Department at *Niles, Barton & Wilmer, LLP*, concentrating her practice in general commercial litigation, professional liability, insurance coverage and property insurance law in Maryland, Pennsylvania and the District of Columbia. Ms. Hayes previously served as a law clerk for the Honorable Yolanda A. Tanner of the Baltimore City Circuit Court in Baltimore, MD.

Membership Minute

Educate, Act, Recommit, Repeat

By Wendy Merritt



"No one becomes 'not racist,' despite a tendency by Americans to identify themselves that way. We can only strive to be 'antiracist' on a daily basis, to continually rededicate ourselves to the lifelong task of overcoming our

country's racist heritage." Ibram X. Kendi, *An Antiracist Reading List*, N.Y. Times, May 29, 2019, <http://www.nytimes.com/2019/05/29/books/review/antiracist-reading-list-ibram-x-kendi.html>.

As attorneys, we are lifelong learners who are adept at rising to the occasion when met with new challenges. We are also highly motivated individuals who are driven to help others. This year has already presented its fair share of challenges, old and new, and we are just past the halfway point. If you are anything like me, you were looking forward to 2021 back in March. Then, during one of the worst pandemics in recent history, protests broke out across the United States and around the world after Minneapolis police officers killed George Floyd, an unarmed black man, on May 25. We were once again reminded of the critical importance of working to counteract the injustices of systemic racism.

This unprecedented human rights movement continues to gain momentum, and we must do our part to help sustain it. Young Lawyers Committee ("YLC") members and alumni have said time and again that the greatest value membership provides is the network of friendships formed. In this supportive and resourceful community, we stand up and show up for each other in incredible ways. Now, we

stand in solidarity with our members experiencing racism on a daily basis and are committed to educating ourselves on antiracism and taking action within our community and beyond. We have a lot we can learn from each other, and we will need to "continually rededicate ourselves" to these goals.

After carrying each other through months of quarantine, we know that the YLC is a powerful means for creative problem-solving and providing support to our friends and colleagues. Last month, YLC Chair Shannon Nessler posted fantastic advocacy suggestions and resources to our Community page, which is a great place to learn more and start contributing to the conversation. Feel free to post or email your suggestions on how we can educate ourselves; take action together; redouble our ongoing efforts to advance diversity and inclusion within our membership; be effective advocates for reform; and continually work to dismantle systemic racism. We are here to listen and learn, and we look forward to celebrating the work we know this community will do to counteract racial injustice.

Wendy Merritt is an attorney with *Larson • King, LLP*, in Saint Paul, Minnesota, a litigation firm representing businesses and individuals across a wide range of practice areas. Wendy focuses her practice in the areas of labor and employment, insurance and reinsurance disputes, and professional liability. Wendy earned her J.D. from William Mitchell College of Law and her B.S. in Genetics from the University of Minnesota. Wendy can be reached at wmeritt@larsonking.com.

Family Wellness During the Pandemic

By Kelly Ferrell



Since the onset of the COVID-19 pandemic, parents have faced unforeseen challenges. We know these challenges all too well now. They range from balancing a full-time work schedule with full-time parenting and full-time homeschooling, keeping our families active while so many of the resources we previously relied on are closed, and worrying about our children's own mental wellbeing as they are socially distanced from their peers. While there is no cure-all and each family faces its own unique obstacles, this article provides some tips on how to maintain your family's wellness during this time of parental unprecedented challenges.

- 1. Focus on what you can control.** This is a time of so much uncertainty—when will my work reopen? Will my career path be affected? Will schools open in the fall? Will there be another round of shut-downs and quarantine orders? Will my family get sick? Will I get sick? How long will this pandemic last? We cannot control the answers to many of these questions, and, therefore, it does nothing positive for the mental health of our families or ourselves to stress about these issues. Instead, it is important for the mental health of our families and ourselves to focus on the things we can control. Where to start? Make a list of what you can control for your family despite these uncertainties, such as: daily schedules and routines, diet and meal plans, exercise, and practicing best preventative measures for contracting or spreading illness. Develop individual and family goals, and monitor your progress as you go, which will help create not only a sense of control but also achievement. By focusing on the things that you can control, you will shift your focus from the things you cannot.
- 2. Prepare your children for the upcoming school year.** Typically, by this time of year, we are thinking about back-to-school shopping, class schedules, and wishing the summer was just a bit longer. But, instead, this year we are asking ourselves whether schools will even reopen, and, if they do, what will that look like? It's important to prepare our children for what the upcoming school year might entail. Talk through the changes with them so that they are prepared in advance (such as sports or extra-curriculars might

be suspended, masks might need to be worn, social events cancelled, and remote learning might need to occur on a periodic or regular basis), but do so in a positive way. You can set the tone for how your children look at the changes they will likely face in the new school year, and thus mitigate the stress and anxiety that they may already be feeling.

- 3. Embrace the opportunities.** Although this time creates so many stresses for families, try to remember and focus on the opportunities that it creates that wouldn't otherwise exist. My family has taken this time to do so many things that we normally do not make the time for, including cooking together, going on nature hikes, biking, and fishing. For those of us working from home, be mindful of inadvertently making your family members feel like they are in the way or a burden while you work from home. Instead, when you make your daily schedule and routine, carve out time when you can step away from your computer, phone, and the media and spend uninterrupted time with your family.
- 4. Plan ahead for the contingencies.** Because the upcoming school year is a big uncertainty, start planning now for the contingencies. Try to make plans for how you will handle childcare if schools and childcare facilities periodically close throughout the school year. Although we can't plan for every uncertainty, if you have a back-up plan in place now, you will have less anxiety going into the fall.

Kelly Ferrell is a commercial litigator, with a focus on employment litigation, at Porter Hedges LLP in Houston. 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.

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)!