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DRI is a wonderful organization for improving your legal skills, learning substantive law, and expanding your network of potential attorney referral sources, clients, and friends. DRI offers numerous opportunities to speak, publish, and involve yourself in committees and subcommittees. Whether you author an article for The Voice, present a webinar, or help plan the next DRI Annual Meeting, getting involved will ensure that you optimize what the organization has to offer.

The above speaks to DRI as a respected national organization. Many members do not realize that it has significant reach into nearly every state and Canadian province on a more local level. Namely, DRI is connected with dozens of state and local defense organizations (“SLDOs”) which provide many of the same great opportunities that DRI provides, but on a more targeted, local level. Every member should take advantage of the fact that DRI offers a perfect chance to raise his or her profile within a local SLDO.

Many SLDOs have significant overlap with DRI membership. However, with DRI’s breadth and reach, it is likely that local DRI member colleagues might never encounter each other at a DRI event, seminar, or meeting. SLDOs provide the missing connective tissue to unite like-minded civil defense lawyers in a given area. The synergies between each SLDO and DRI ensure that members can get access, even if it is indirect, to the far-reaching benefits of other sectors of the DRI network by linking with their local attorneys.

The Young Lawyers Committee in particular has sought to encourage and foster relationships between ourselves and SLDO Young Lawyers committees by coordinating yearly (or sometimes bi-yearly) networking events. We engage DRI Young Lawyers Committee members who are also prominent or active members of their SLDO to plan and facilitate events co-hosted by DRI and the SLDO. This gives members a chance to network, learn about both organizations, and encourages new and continuing membership. It also is a very useful opportunity to promote the excellent annual Young Lawyers seminar. We have enjoyed great success with these events over the past few years and look forward to another year of the same. If you are interested in helping plan a networking event in your state, please let us know! It is a great (and easy) opportunity to get involved in the DRI Young Lawyers Committee, meet local lawyers, raise your profile within your SLDO, and expand your network generally.

On the DRI website you can find the DRI State and Local Defense Organization Directory, which provides information regarding state and Canadian provinces that maintain active SLDOs. For larger states and cities, many maintain SLDOs in more targeted locations as well. We encourage everyone to look up the SLDO most relevant to you and get involved.

The SLDO 2017–2018 leadership is comprised of Sam Burnett (sburnett@shb.com), Andrew Tharp (atharp@butlersnow.com), and Jeff Russell (jrussell@lambertcoffin.com). Please reach out to us if you have interest in getting involved or would just like more information. We look forward to hearing from you!

Samantha N. Burnett is an associate in the San Francisco, CA, office of Shook Hardy & Bacon, LLP. Samantha’s practices focuses primarily on automotive product liability litigation and consumer class actions. She has been a member of the Young Lawyers Committee since 2013 and is currently Co-Chair of the Young Lawyers SLDO Subcommittee. Samantha can be reached at sburnett@shb.com.

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More Seats at the Table: Leveraging Your Position to Turn a Diversity Strategy into a Diversity Win for Everyone

By Tasha Miracle

The verdict is in, and everybody knows it—diverse organizations and businesses perform better than less diverse ones.

Again and again, increasing diversity has been shown to have a positive impact on the entities that do it best. Seeking out diverse candidates exposes law firms and businesses to a broader range of talent. It encourages innovation and creativity. Data even shows that more diverse companies are more profitable. If such studies were not enough, we all know these things are true because our clients demand diverse legal teams. Our clients have seen that diversity in the legal profession not only makes the world a better place, it improves the legal services and results they receive from their law firms.

Despite the fact that we know these things are true and we have known them for some time, the legal profession is still sadly lacking in the diversity department. Why? Why did 2018 American Bar Association data show that only 36 percent of all lawyers are women; 5 percent of all lawyers are African American or black; 5 percent of all lawyers are Hispanic; 3 percent of all lawyers are Asian; and only 1 percent of all lawyers are Native American? See Weiss, Lawyer Population 15 percent Higher Than 10 Years Ago, New ABA Data Shows, ABA Journal (May 3, 2018). Why do law firm statistics show that less than 1 percent of firm lawyers have a disability? NALP, 2017 Report on Diversity in U.S. Law Firms at 18 (Dec. 2017). (I do not think I need to tell you that these percentages are not representative of our society, but just to be clear: they are not.)

Worse, such appalling statistics say nothing about the types of diversity that are more difficult to quantify, like sexual identity, religion, sexual orientation, socioeconomic class, personality, or any combination of the above (intersectionality, anyone?).

The answer to the “why” here is obviously not simple or straightforward. The legal profession's problem of under-representation is multifaceted, and there is no magic pill. But one thing is for sure: We can do better. As individuals and as institutions, we can do better, and we can do it right now. Even as young attorneys, we have the ability to push the conversation and demand it of our employers and our peers.

Luckily, strategies for overcoming such diversity challenges already exist. One of my favorites is quite straightforward and has been a part of the diversity discourse for quite some time now. That strategy is to work toward critical mass. To improve and maintain diversity, we need to give greater numbers of diverse lawyers a seat at the table and then make sure they stay there. Nobody wants to feel like a token or like they represent their entire gender, race, ethnicity, etc. at a firm or in a group. Nobody wants to feel alone or isolated in the workplace or in their professional lives. In order to right this ship, law firms must begin to hire enough diverse lawyers to make sure that diverse team members feel welcome, valued, and comfortable speaking up and being themselves.
The reasons why critical mass works and why it is a good idea are more complicated than this, of course, but the moral of the story is that underrepresented groups need to be given sufficient space in a room, at a table, and within and organization for diversity to take hold. Working toward critical mass is not the only way to do that, but it is one very important piece of the puzzle.

With these important objectives in mind, I have a few tips that can help you and your firm or organization find, hire, support, and keep diverse talent.

**Challenge Yourself Daily**

We all get by in life by relying on a series of implicit biases and stereotypes. It is what makes us lean toward people who are like us; helps us build community; and even delineates where we live, what we eat, and how we dress. It is not necessarily a bad thing, but it can have very negative consequences for individuals in underrepresented groups. So, I implore you to think critically about the choices you make every day and see if you can begin to break down some of those preferences in the name of embracing and encouraging diversity. Give an assignment to the associate or summer who looks, talks, and writes differently than you, and then spend some extra time mentoring (and maybe even learning from) that attorney. Seek out opportunities to support and befriend team members from whom you differ. Ask your colleagues about the diversity initiatives they are a part of and how you can help support those initiatives. When you go to networking events, make an effort to connect with someone who is different than you. If we all did a little better job of challenging ourselves and pushing ourselves outside of our comfort zones, that would go a long way to ensuring that diverse candidates not only get, but keep, seats at the table.

**Establish Concrete Goals and Action Steps**

Lawyers are task masters and goal achievers. Keeping those strengths in mind, we should all set small and large goals for encouraging diversity within our institutions. Law firms should consider developing diversity targets. Many law firms (if not most) have strategic plans that include increasing diversity as a goal, so why not set a concrete marker to measure that increased diversity? We should all have our own individual goals for how we are going to encourage and embrace diversity in our daily lives. Personally, I set a goal of pushing myself to speak up about the importance of diversity as often as possible. I also push myself to get outside of my comfort zone, increase the diversity of my network, and hold myself accountable for identifying and objecting to diversity roadblocks.

**Be An Ally**

Finally, do not stop at challenging yourself, becoming a mentor, and setting goals—go above and beyond and become a diversity champion! Get involved in your firm’s diversity initiative or in DRI’s Diversity and Inclusion Committee and help build momentum not just on paper, but also in spirit. Learn more about the importance of diversity and the small, but insidious, micro-aggressions that hinder it. Identify and correct your own micro-aggressions, and develop strategies to address those of others. Speak up when you see underrepresented groups marginalized and acknowledge when there are no seats in the room for individuals in those groups. Develop a diverse network and leverage your position to recommend diverse candidates, whether as a lateral at your firm or as an option for a position elsewhere. Never forget that if you have a seat at the table, you also have a responsibility to use that privilege for good by going above and beyond to provide opportunities to those who are not sitting at the table with you.

**Conclusion**

There is no doubt that diversity in the legal profession is improving, but as a member of an underrepresented group, I can tell you that it is not happening nearly fast enough. In order to shift that momentum, we all need to start chipping in. Diversity cannot just be a buzzword. It cannot just be a piece of a dusty strategic plan that sits on a shelf, untouched and unused. It needs to be ingrained in the fabric of our being and something that we all think about and work toward each and every day.

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In the wake of increased public focus on workplace harassment, recent federal-court decisions serve as a timely reminder of the breadth of employers’ obligations under federal law to protect employees from unlawful harassment in the workplace, even if that harassment is perpetrated by a non-employee.

In broad terms, Title VII of the Civil Rights Act of 1964 (“Title VII”) prohibits an employer from discriminating against an employee on the basis of sex, and an employer may violate this provision of Title VII when unwelcome conduct based on sex is so severe or pervasive that it creates a hostile or abusive work environment. Moreover, even when a hostile work environment is created by persons who, unlike employees, fall outside of the employer’s direct control, such as customers, clients, or vendors, the employer may nonetheless be held liable for the hostile work environment.

To determine whether an employer is liable to an employee under Title VII when a third party creates a hostile work environment, courts apply a negligence standard. Specifically, the inquiry centers on (1) whether the employer knew or should have known of the harassment; and (2) whether the employer failed to take prompt and appropriate corrective action reasonably likely to prevent the harassment.

Application of Hostile Work Environment to Claims of Third-Party Harassment

Three recent federal-court cases demonstrate the potential breadth of employer liability under the negligence standard for claims of third-party harassment.

For instance, if a nurse at a senior care facility is continually propositioned and groped by one of her resident patients and complains about the treatment to her supervisors, the senior care facility may be liable for the patient’s harassment, even if that patient suffers from dementia. Under such circumstances, a federal circuit court acknowledged slightly heightened standards for hostile work environment in the context of a patient with cognitive impairments. Gardner v. CLC of Pascagoula, L.L.C., 894 F.3d 654, 657 (5th Cir. 2018). Even so, when the harassing conduct occurred daily and “consisted of physical sexual assault and violent outbursts,” and the nursing home knew of but “failed to even attempt to remedy the situation,” the court determined there was sufficient evidence for the hostile work environment claim to go to trial. Id.

As another example, if a vendor is sexually harassed by one of her client-company’s employees, and that harassment occurs in the presence of her managers, the vendor company may be liable for its client’s employee’s harassment, even if the vendor-company’s employee never reported the harassment to her employer. Under these circumstances, a federal circuit court determined that the inspection company was on constructive notice of the hostile work environment because the managers who witnessed the harassment had the duty to report it and failed to do so. Nischan v. Stratosphere Quality, LLC, 865 F. 3d 922, 931 (7th Cir. 2017). According to the court, once someone with a duty to pass on information learns of third-party sexual harassment, “the employer is considered to be on notice even if the victim never reported the harassment.” Id.

Finally, if a store clerk is continually followed through the store and confronted by a customer over the course of a year, the store may be liable for the customer’s harassment, even if the store responded to the store clerk’s complaints by speaking to the customer and directing the customer to refrain from further contact with the store clerk. In this situation, a federal circuit court determined that although the employer once attempted to address the harassment, the employer’s response was inadequate because the employer knew that the customer subsequently resumed the harassing conduct, that the clerk was afraid of the customer, and that she had contacted the police about the customer’s behavior. EEOC v. Costco Wholesale Corp., Case Nos. 17-2432 & 17-2454 (7th Cir. Sept. 10, 2018).

Although these decisions are adverse to the employer, they nonetheless provide a platform for considering what appropriate remedial action might look like. Under the facts of Gardner, for example, the employer could have
provided one-on-one help to the nurse while assisting the offending patient or assigned the patient to more specialized care. Facing facts like those in *Nischan*, managers should not only report to their supervisors, but could (and likely should) also report the harassing behavior to the client-company. And, under the facts of *Costco*, the employer could have simply banned the harassing customer from the store.

**Difficulties in Remediating Third-Party Harassment in the Workplace**

As a general matter, then, an employer should address claims of third-party harassment in the same manner in which it would address any other hostile work environment claim by promptly and thoroughly investigating any allegations of harassment (or any potentially harassing conduct that it witnesses) and taking appropriate remedial action. However, harassment perpetrated by a third party raises complications beyond those that apply in the case of harassment perpetrated by employees under the employer’s control.

For example, investigation may be more difficult given that the employer cannot compel the alleged harasser to sit for an interview or produce documents as it could an employee. Still, the employer must at least investigate as far as its limited control will allow.

Furthermore, to the extent that the employer seeks to remediate the hostile work environment by reassigning or relocating the harassed employee to avoid contact with the third-party harasser, the employer may be exposing itself to a retaliation claim. Imagine, for example, that a salesperson complains that one of her employer’s biggest clients is sexually harassing her, and the company attempts to remediate the situation by reassigning the salesperson to different accounts. Imagine also that this reassignment inadvertently affects the salesperson’s compensation or impedes her opportunity for advancement. As well-intentioned as the reassignment might be, it would raise a straightforward claim of retaliation under Title VII because the employee engaged in protected activity by complaining of sexual harassment, the employer took action because of that complaint, and the action the employer took was adverse to the employee.

Accordingly, employers should tread carefully when seeking to remediate third-party harassment, and let the particular circumstances govern the nature of the response. In the hypothetical discussed above, for instance, an alternative solution would be for the employer to seek from the client a new contact for the salesperson who is being harassed or, if necessary, to directly confront the client about the behavior.

In short, while recent cases demonstrate that the landscape of legal liability for third-party harassment under Title VII is fraught with pitfalls for the unwary employer, a thoughtful employer has every opportunity to craft creative solutions that effectively address such misconduct while preserving business relationships.

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**Leadership Note: The Chair’s Corner**

**Making the Most After Annual Meeting—What’s Next?**

By Shannon Nessier

*The West Wing* was one of my favorite TV shows ever (yeah, I am pretty old!). Whenever the President would deal with a bunch of tasks, he was known to tackle them in rapid succession, and then ask—“What’s Next?” It was his way of keeping things moving, wasting no time, and, of course, just being a total boss!

It is back to work for all of us after DRI’s 2018 Annual Meeting here in San Francisco last month. It was a privilege
to host many of you in my hometown, share a great dinner with Young Lawyers at Farmer Brown’s, and hear from inspired and diverse speakers at the sessions. Still, I can’t lie, I am exhausted! But, we all know there is no time to rest. After any DRI meeting, but especially Annual Meeting, it is important to leverage your time there to get the most out of it. So below are a few tips for making sure you are getting all the value out of your Annual Meeting adventure.

First, complete your CLE registration. I know this seems obvious, but CLE can be costly and reporting periods sneak up on all of us. So, go find that e-mail, click on the link, and get your certificate now!

Second, devote an hour to LinkedIn updating. First, just add new folks. No one in DRI is ever put off by being added as a contact. So, everyone you saw, spoke to, had a beer with—ADD THEM! Then, pick a handful of longer-running contacts, and send them an actual message. Just four or five people, whom you wouldn’t call or text but have built a connection with—say hi, how great it was to see them, and make some concrete plans to meet up in your town, at the YL meeting, or wherever you think you will see them next. The way that lukewarm contacts turn hot is by stoking them!

Third, reflect back on your experience and consider writing about it: write about it for your firm so they can see how valuable the Annual Meeting is; write about it for DRI, where there are so many places to publish a great piece on Annual Meeting highlights; or write about it for your year-end evaluation, so you can show how much you put into this organization and how much you are gaining from that investment.

Finally, start making BIG PLANS! Annual Meeting is special because it isn’t just one field, or one affinity group; it is the chance for the whole membership to come together, talk about big issues, connect across disciplines, and see the many ways DRI can impact your career and the legal community. So, after Annual Meeting, you should spend some time planning: plan where you see yourself in the organization in five to ten years; plan what you need to do to get there; plan your seminar and Annual Meeting attendance for next calendar year; plan applying for a speaking spot for a seminar or webinar; plan getting more involved in your SLC so you can expand your network.

This is the meeting where you get to see it all; don’t let that go to waste. Once you are unpacked, laundry washed and put away, and all your favorite DVR’ed shows watched—take a deep breath, and get your brain working on—“What’s Next?”

Shannon Nessier is a Partner at Hanson Bridgett LLP in San Francisco, CA, and is First Vice Chair of the Young Lawyers Steering Committee. Shannon can be reached at snessier@hansonbridgett.com.

DRI Young Lawyers Member Spotlight

Olivia F. Amlung

Olivia F. Amlung is an associate at Adams, Stepner, Woltermann & Dusing, PLLC in Covington, Kentucky. ASWD is a full-service law firm, offering a variety of business, transactional, and litigation services to its clients in Kentucky, Ohio, and Indiana. Olivia is a member of the firm’s Litigation Practice Group, primarily focusing on claims involving personal injury, criminal defense, government defense, and a variety of other civil litigation matters.

Olivia graduated from the University of Louisville in 2013 with honors and continued her education at the University of Cincinnati College of Law, graduating in 2016. Olivia is admitted to practice in the Commonwealth of Kentucky. She is an active member of the Kentucky Bar Association, the Northern Kentucky Bar Association, Kentucky Defense Counsel, and various other legal organizations. She is passionate about the community’s youth and actively volunteers with multiple leadership programs focusing on the professional and personal development of local high school students. Following this passion, she often takes an active role volunteering with the Boone County Schools, the Boone County Education Foundation, the Chamber of Commerce, and various local political groups. Olivia is a life-long resident of Boone County, Kentucky, where she currently lives with her husband, Justin, and their two dogs, Votto and Larkin.
How and why did you first get involved with DRI?

I was encouraged to get involved with DRI by a Senior Partner at my firm, Claire Parsons. The majority of my practice focuses on defense litigation, and the resources and networking opportunities provided by DRI are invaluable for a young attorney.

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

Other than Young Lawyers, I am most interested in the Appellate Advocacy and Litigation Skills Committees. Ever since my days of moot court, I have always loved appellate law and hope to develop a practice in that area. And, as a relatively new attorney, I am always looking to explore helpful ways to improve my trial advocacy skills.

What is your favorite part about being a lawyer?

Being an attorney is exciting, and every day is a new challenge. The law is always changing—no two days, or two cases, are ever the same. The excitement of problem solving, while also helping clients in a tough situation, is my favorite part of this career.

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

Usually, one of three things—volunteering for one of the many extracurricular activities with which I am involved; making creative art pieces for my Etsy shop; or just spending time with my husband, Justin, and our two dogs, Votto and Larkin.

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

I place a great deal of value on continuing education and exploring complex legal matters. This past year, I have been published twice in various legal publications for my research and analysis of various legal topics.

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

Don’t take things personally. We work in a highly adversarial field of practice—sometimes you will win and sometimes you will lose, and people are always trying to tell you that you’re wrong. But, at the end of the day, the law says what it says, and you have to keep pushing through even when it’s not on your side.

What are your top five favorite songs of all time?

In no particular order: “Space Jam” by Quad City DJs, “Speed of Sound” by Coldplay, “Peace of Mind” by Boston, “Say” by John Mayer; and “Parachute” by Chris Stapleton.

What is a hidden talent you have that no one knows?

I can rap every word to the song “Bust a Move” by Young MC. It’s mildly impressive.

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

My dad owns a small restaurant in my hometown, and, in my humble opinion, it has the best chicken wings around. Anyone who comes through Northern Kentucky has to stop and eat at Buffalo Bob’s Family Restaurant in Florence.

Membership Minute

Membership Q & A—Josh Webb

By Kate K. Van Namen

We asked the Young Lawyers Committee’s (“YLC”) Immediate Past Chair Josh Webb a few questions about his membership experience with DRI. Here’s what he had to say.

Q: What does your DRI membership mean to you?

A: For me, DRI membership is all about relationships and connections. We put on great programming that impacts all ranges of practices, and we get to do that with friends.
Q: Why is recruiting new members to the YL committee so important?

A: As an organization focused on people, we want our ranks to be full. One of the great things about DRI is that even at some of our largest events, or in our largest committees, the number of people involved can still feel familiar—there is no better place to start than the Young Lawyers Committee, where members can grow their practices alongside DRI colleagues from the outset.

Q: What tips do you have for getting new members to join?

A: In my opinion, the best opportunities to recruit new members still center on our seminars and events. The vast majority of us have to travel for work, and we all need quality educational programming to expand our practices. Convincing potential new members to give the experience a try while doing things they need to do really shows the value-add of DRI for any lawyer’s practice.

The incoming Chairs of the Membership Subcommittee are Kate Van Namen and Jami Lacour Ishee, and the Vice Chairs are Alie Van Deman and Clay Waterman. We look forward to working with you in the next DRI year to recruit new members to the YLC!

Timeout for Wellness

Wellness Fulfillment via DRI Young Lawyers

By Laura J. Gard

While writing my last article on behalf of the Young Lawyers Wellness Subcommittee, I became nostalgic. Joining the Steering Committee and having been involved as Vice-chair, and thereafter Co-Chair, of the Young Lawyers Wellness Subcommittee for the past two years has made a major impact in my life. Wellness and trying to achieve a balanced lifestyle are certainly priorities of mine that I thought would be furthered by taking on these leadership roles. However, what I did not consider was the added bonus that being involved in the Young Lawyers Wellness Subcommittee would bring: a circle of friends and support system of like-minded women.

As it turns out, while trying to bring wellness options to the Young Lawyers of DRI, I achieved multiple dimensions of wellness. As you may already be aware, it is said that there are seven dimensions of wellness:

- Physical;
- Emotional;
- Intellectual;
- Social;
- Spiritual;
- Environmental; and
- Occupational.

At any given time, it is fair to say that we are attaining success in three dimensions while working toward fulfilling success in the other dimensions. The shift of success in these different dimensions can and may change by the day for each of us. I have found that through DRI, I have achieved success, at various times, in all seven dimensions of wellness. These achievements came through saying yes to opportunities and invites early on in my involvement, putting myself out there socially in hopes of making a shared connection, and committing to being present at the Young Lawyers Seminar (and fly-in meeting for the Steering Committee) yearly.

I encourage everyone that reads this article to become involved and commit to the following task list: (1) attend the Young Lawyer Seminar in Nashville, Tennessee, in June 2019; (2) wake up EARLY at the Young Lawyer Seminar (YES, you can do it; everyone will be in the same tired boat) to participate in the class or walk or other activity that the Wellness Subcommittee has planned; and (3) buy in to the idea that those that do an activity together, bond together. I guarantee that you will not be disappointed and
may even fulfill three to four dimensions of wellness within the first two hours of your day at the upcoming seminar.

If you are looking to become more involved, please do not hesitate to contact anyone on the Young Lawyers Steering Committee. We are always open to making more connections and friends.

Laura J. Gard is a Partner in the Merrillville office of Kightlinger & Gray, LLP. She is admitted to practice in both Indiana and Illinois. Her practice currently focuses on Employment, Workers’ Compensation, Insurance Coverage and Bad Faith, and General Insurance Defense Litigation. Laura regularly handles and responds to Equal Opportunity Employment Commission (EEOC) and Indiana Civil Rights Commission (ICRC) charges. She also provides workers compensation advice and guidance to employers and insurance carriers on pre-litigation matters such as compensability, settlement value, and independent medical examination (IME) referrals. Once in litigation, she defends claims before the Indiana Workers’ Compensation Administrative Law Judges and Boards. Laura routinely practices in all state and federal courts in Indiana in other matters of Insurance Defense, including but not limited to Insurance Coverage and Bad Faith and Transportation matters. Laura is the Chair of the firm’s Diversity and Inclusion Committee. She is active in several organizations including DRI, for which she has served on the Steering Committees for Workers Compensation, Young Lawyers, and Diversity and Inclusion. Laura can be reached at lgard@k-glaw.com.

And the Defense Wins

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, Taryn Harper (harpert@gtlaw.com), Anna Tombs (Anna.Tombs@mcmillan.ca), Natalie Baker (nbaker@mrchouston.com), and Darin Williams (dwilliams@lanermuchin.com), so we can share it in Raising the Bar!